

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Stargel, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, March 6, 2014
TIME: 9:30 —11:00 a.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Stargel, Chair; Senator Braynon, Vice Chair; Senators Detert, Flores, Galvano, Gibson, Legg, Sachs, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 702 Bean (Similar H 745)	Pharmacy Audits; Enumerating the rights of pharmacies relating to audits of pharmaceutical services which are conducted by certain entities; exempting audits in which fraudulent activity is suspected or which are related to Medicaid claims; establishing a claim for civil damages if the pharmacy's rights are violated, etc.	HP 02/11/2014 Favorable RI 03/06/2014 JU
2	SB 836 Bean (Similar H 687, Compare H 689)	Medical Gas; Requiring a person or establishment located inside or outside the state which intends to distribute medical gas within or into this state to obtain an applicable permit before operating; requiring the Department of Business and Professional Regulation to establish the form and content of an application; setting the minimum requirements for the storage and handling of medical gas; authorizing the department to require a facility that engages in wholesale distribution to undergo an inspection, etc.	RI 03/06/2014 HP
3	SB 798 Ring (Compare H 807, H 871, S 1462)	Real and Personal Property; Providing that an amendment to a declaration related to rental condominium units does not apply to unit owners who vote against the amendment; authorizing an association to inspect and repair abandoned condominium units; expanding costs that a unit owner is jointly and severally responsible for paying with the previous owner; providing emergency powers of a cooperative association and a homeowners' association, etc.	RI 03/06/2014 JU AP

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Thursday, March 6, 2014, 9:30 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 692 Stargel (Similar H 713)	Engineers; Revising qualifications and procedures for the appointment and reappointment of members to the Board of Professional Engineers; revising requirements for an applicant who fails a certain examination and wants to retake it in order to practice in the state as an engineer; revising requirements for professional development hours and license renewal for engineers, etc.	
		RI 03/06/2014 EE GO	

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 702

INTRODUCER: Senators Bean and Sobel

SUBJECT: Pharmacy Audits

DATE: March 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Petersen	Stovall	HP	Favorable
2.	Pringle	Imhof	RI	Pre-meeting
3.			JU	

I. Summary:

SB 702 establishes the rights of a pharmacy when it is audited directly or indirectly by a managed care company, insurance company, third-party payor, pharmacy benefit manager, or an entity that represents responsible parties, such as companies or groups that self-insure. The rights created are largely the same as the requirements currently applicable to Medicaid audits of pharmacies. The rights do not apply to audits based on a suspicion of fraud or audits of Medicaid fee-for-service claims. The bill creates a civil cause of action for treble damages for a pharmacy injured by a willful violation of its rights.

II. Present Situation:

Pharmacy Regulation

Pharmacies and pharmacists are regulated under the Florida Pharmacy Act (the Act) found in ch. 465, F.S.¹ The Board of Pharmacy (the board) is created within the department to adopt rules to implement provisions of the Act and take other actions according to duties conferred on it in the Act.²

Several pharmacy types are specified in law and are required to be permitted or registered under the Act:

- Community pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.

¹ Other pharmacy paraprofessionals, including pharmacy interns and pharmacy technicians, are also regulated under the Act.

² Section 465.005, F.S.

- Institutional pharmacy – a location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medical drugs are compounded, dispensed, stored, or sold. The Act further classifies institutional pharmacies according to the type of facility or activities with respect to the handling of drugs within the facility.
- Nuclear pharmacy – a location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, excluding hospitals or the nuclear medicine facilities of such hospitals.
- Internet pharmacy – a location not otherwise permitted under the Act, whether within or outside the state, which uses the internet to communicate with or obtain information from consumers in this state in order to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state.
- Non-resident pharmacy – a location outside this state which ships, mails, or delivers, in any manner, a dispensed drug into this state.
- Special pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold if such location is not otherwise defined which provides miscellaneous specialized pharmacy service functions.

Each pharmacy is subject to inspection by the Department of Health and discipline for violations of applicable state or federal law relating to pharmacy. Any pharmacy located outside this state which ships, mails, or delivers, in any manner, a dispensed drug into this state is considered a nonresident pharmacy, and must register with the board as a nonresident pharmacy.^{3,4}

Pharmacy Audits

Advances in pharmaceuticals have transformed health care over the last several decades. Many health care problems are prevented, cured, or managed effectively for years through the use of prescription drugs. As a result, national expenditures for retail prescription drugs have grown from \$120.9 billion in 2000 to 263.3 billion in 2012.⁵ Health plan sponsors, which include commercial insurers, private employers, and government plans, such as Medicaid and Medicare, spent \$216.5 billion on prescription drugs in 2012 and consumers paid \$46.8 billion out of pocket for prescription drugs that year.⁶

As expenditures for drugs have increased, health plan sponsors have looked for ways to control that spending. Among other things, they have turned to pharmacy benefit managers (PBMs), which are third party administrators of prescription drug programs. PBMs initially emerged in the 1980s as prescription drug claims processors. PBMs now provide a range of services including developing and managing pharmacy networks, developing drug formularies, providing mail order services, and processing and auditing claims.

³ Section 465.0156, F.S.

⁴ However, the board may grant an exemption from the registration requirements to any nonresident pharmacy which confines its dispensing activity to isolated transactions. *See* s. 465.0156(2), F.S.

⁵ Centers for Medicare and Medicaid Services, *National Health Expenditures Web Tables, Table 16, Retail Prescription Drugs Aggregate, Percent Change, and Percent Distribution, by Source of Funds: Selected Calendar Years 1970-2012*, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/downloads/tables.pdf> (last visited Feb. 6, 2014).

⁶ *Id.*

In 2007, there were approximately 70 PBMs operating in the United States and managing prescription drug benefits for an estimated 95 percent of health beneficiaries nationwide.⁷ Industry mergers in recent years have cut the number of large PBMs to two which together control 60 percent of the market and provide benefits for approximately 240 million people.⁸

The audit process is one means used by PBMs and health plan sponsors to review pharmacy programs. The audits are designed to ensure that procedures and reimbursement mechanisms are consistent with contractual and regulatory requirements. Over the years, different types of audits have been developed to address changes in benefit and billing processes. A concurrent daily review audit is intended to make immediate changes to a claim before payment is made and is triggered when a PBM or health plan sponsor's computer systems identify an unusual prescription, e.g. by volume dispensed, number of days supplied. A retrospective audit may be conducted as a desk top audit or an in-pharmacy audit. PBM or health plan sponsor staff conduct a desk audit remotely by contacting pharmacies to obtain supporting documentation, such as the written prescription, for a claim the staff are reviewing. An in-pharmacy audit is the most extensive and can last for days or weeks. During an in-pharmacy audit, audit staff require pharmacies to provide documentation for prescriptions dispensed during a specified time period. When the auditors identify errors or lack of documentation to support the claim, they notify the pharmacy and request repayment of all or a portion of the prescription cost. The last form of audit is an investigative audit which occurs where there is a suspicion of fraud or abuse.

Pharmacies have increasingly complained about the onerous and burdensome nature of these audits. A 2011 survey conducted among members of the National Community Pharmacists Association found that pharmacy audits were focusing on trivial errors (misspelling patient names or incorrect data) rather than intentional, fraudulent acts.⁹

Organizations such as the National Community Pharmacists Association,¹⁰ which represents independent pharmacies, have been advocating for legislation at the federal and state levels to address what they perceive as predatory practices by pharmacy benefit managers. As of 2013, 29 states¹¹ have passed fair and uniform pharmacy audit laws that regulate PBM pharmacy audit practices. Elements of these laws typically include:

⁷ Office of Program Policy Analysis & Government Accountability, *Legislature Could Consider Options to Address Pharmacy Benefit Manager Business Practices*, Report No. 07-08 (Feb. 2007), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0708rpt.pdf> (last visited Feb. 6, 2014).

⁸ Office of Program Policy Analysis & Government Accountability, *Research memorandum: Pharmacy Benefit Managers* (December 2, 2013) (on file with the Senate Health Policy Committee).

⁹ National Community Pharmacists Association, *New Survey Reveals Pharmacists are Increasingly Struggling to Care for Patients Amid Predatory Audits, Unfair Reimbursement Practices*, <http://www.ncpanet.org/index.php/news-releases/1062-new-survey-reveals-pharmacists-are-increasingly-struggling-to-care-for-patients-amid-predatory-audits-unfair-reimbursement-practices> (last visited Feb. 6, 2014).

¹⁰ National Community Pharmacists Association, *NCPA to Medicare: Rein in Egregious Pharmacy Audits; Reform Preferred Networks; and Curb Mail Order Waste in 2014 Prescription Drug Plans*. Found at: <http://www.ncpanet.org/index.php/news-releases/1593-ncpa-to-medicare-rein-in-egregious-pharmacy-audits-reform-preferred-networks-and-curb-mail-order-waste-in-2014-prescription-drug-plans> (last visited Feb. 6, 2014).

¹¹ Alabama, Arizona, California, Colorado, Florida (Medicaid, only), Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, and Vermont.

- Prior notification.
- Limiting the audit timeframe to not more than 24 months.
- Recoupment based on direct evidence and not extrapolation.
- Prohibiting recoupment or penalties for clerical errors.
- Requiring the availability of a consulting pharmacist if the audit involves clinical judgment.
- Providing a timeframe for receiving results and the opportunity to appeal.
- Exempting audits based on a suspicion of fraud from the auditing criteria.¹²

Medicaid Pharmacy Audits

In 2003, the Legislature established requirements for Medicaid audits of pharmacies. The requirements are as follows:

- The agency conducting the audit must give the pharmacist at least one week's prior notice of the initial audit for each audit cycle.
- An audit must be conducted by a pharmacist licensed in Florida.
- Any clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error regarding a document or record required under the Medicaid program does not constitute a willful violation and is not subject to criminal penalties without proof of intent to commit fraud.
- A pharmacist may use the physician's record or other order for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug.
- A finding of an overpayment or underpayment must be based on the actual overpayment or underpayment and may not be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs.
- Each pharmacy shall be audited under the same standards and parameters.
- A pharmacist must be allowed at least 10 days in which to produce documentation to address any discrepancy found during an audit.
- The period covered by an audit may not exceed one calendar year.
- An audit may not be scheduled during the first 5 days of any month due to the high volume of prescriptions filled during that time.
- The audit report must be delivered to the pharmacist within 90 days after conclusion of the audit. A final audit report must be delivered to the pharmacist within 6 months after receipt of the preliminary audit report or final appeal, whichever is later.
- The agency conducting the audit may not use the accounting practice of extrapolation in calculating penalties for Medicaid audits.¹³

The law requires the Agency for Health Care Administration (AHCA) to establish a process that allows a pharmacist to obtain a preliminary review of an audit report and the ability to appeal an unfavorable audit report without the necessity of obtaining legal counsel. The preliminary review and appeal may be conducted by an ad hoc peer review panel, appointed by the AHCA, which consists of pharmacists who maintain an active practice. If, following the preliminary review, the

¹² Office of Program Policy Analysis & Government Accountability, *supra* note 8.

¹³ Section 465.188, F.S.

AHCA or the review panel finds that an unfavorable audit report is unsubstantiated, the AHCA must dismiss the audit report without the necessity of any further proceedings.

These requirements do not apply to investigative audits conducted by the Medicaid Fraud Control Unit of the Department of Legal Affairs or to investigative audits conducted by the AHCA when there is reliable evidence that the claim which is the subject of the audit involves fraud, willful misrepresentation, or abuse under the Medicaid program.

III. Effect of Proposed Changes:

Section 1 establishes the rights of a pharmacy when it is audited directly or indirectly by a managed care company, insurance company, third-party payor, pharmacy benefit manager, or an entity that represents responsible parties such as companies or groups, referred to in the bill as “entity.” The rights include:

- To have at least 7 days prior notice of each initial on-site audit;
- To have an on-site audit scheduled during the first 5 days of the month, only by consent of the pharmacist;
- To limit the audit period to 24 months after the date a claim is submitted to or adjudicated by the entity;
- To have an audit that requires clinical or professional judgment conducted by or in consultation with a pharmacist;
- To use the records of a hospital, physician, or other authorized practitioner to validate the pharmacy records;
- To be reimbursed for a claim that was retroactively denied for a clerical, typographical, scrivener’s, or computer error, if the prescription was properly dispensed, unless the pharmacy has a pattern of such errors or fraudulent billing is alleged;
- To receive the preliminary audit report within 90 days after the audit is concluded and the final audit report within 6 months after receiving the preliminary report;
- To have 10 days after the preliminary audit report is delivered in which to produce documentation to address a discrepancy or audit finding; and,
- To have recoupment or penalties based on actual overpayments, not extrapolation.¹⁴

The rights do not apply to audits that are based on a suspicion of fraud or audits for Medicaid fee-for-service claims. The bill creates a civil cause of action for treble damages for a pharmacy injured by a willful violation of its rights.

Section 2 provides an effective date of July 1, 2014.

¹⁴ Extrapolation is a process whereby statistical sampling is used to calculate and project the amount of overpayment made on claims.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 702 will have an indeterminate fiscal impact on the private health sponsors through potential modifications in pharmacy auditing methodologies and limitations on recoupment of claims.

The prior notification requirement and limitation on audits during the first 5 days of the month may allow pharmacies to manage workload more efficiently.

C. Government Sector Impact:

SB 702 will have an indeterminate, but likely insignificant, fiscal impact on government pharmacies, e.g. public health departments. These pharmacies may file claims from time-to-time with private health sponsors and are subject to random audits, but the substantial majority of their claims are paid by Medicaid.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Agency for Health Care Administration, there may be conflicts with existing Medicaid regulation that could cause problems. While the statute does exempt audits to fee for service Medicaid plans there could be a possible conflict when the fee-for-service plans expire and become Medicaid utilized managed care plans after one year. The bill provides that a pharmacy has the right to be reimbursed for a claim that was retroactively denied for a clerical

error, typographical error, scrivener's error or computer error if the prescription is "properly and correctly dispensed" unless there is a pattern or fraud is alleged.¹⁵

The agency identified the following instances where it indicates a conflict with the Medicaid program that is not exempted as fee-for-service.¹⁶

- Section 409.913(1)(e), F.S., provides that "Overpayment" includes any amount that is not authorized to be paid by the Medicaid program, and therefore to be recovered, whether paid as a result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake.¹⁷
- Section 409.913(7)(f), F.S., provides that in part that when a Medicaid provider presents a claim, the claim must be true and accurate. The related goods and services provided must have been furnished to the recipient by the provider prior to submitting the claim, must be medically necessary, and must be provided in accordance with applicable provisions of Medicaid rules, regulation, handbooks, policies, federal, state, and local laws. The services must be documented by records made at the time the goods and services were provided. Section 409.913(7), F.S., also provides that: The agency shall deny payment or require repayment for goods or services that are not presented as required in this subsection.¹⁸
- Abuse is defined in the Florida Medicaid Provider General Handbook (which has been adopted by rule) as provider practices that are inconsistent with generally accepted business or medical practices and that result in an unnecessary cost to the Medicaid program or in reimbursement for goods or services that are not medically necessary, up-coded, or that fail to meet professionally recognized standards for health care. "Abuse" is not necessarily fraud, therefore receives protection under this proposed statute if based on non-pattern "error".¹⁹

Medicaid policy also requires that documents related to Medicaid claims be retained for a period of five years. The bill also appears to prohibit Medicaid contracted Manage Care Organizations (MC)s) from auditing a non-fee-for-service claim that is over 24 months for a recipient in that MCO whose care is paid for by Medicaid. The agency indicated that should there be a need for the Medicaid program, through the Medicaid Program Integrity, to audit those encounter claims at some point, it may also be limited to that same 24-month look-back period.²⁰

VIII. Statutes Affected:

This bill creates section 465.1885 of the Florida Statutes.

¹⁵ See s. 465.003(6), Fla. Stat. (2013).

¹⁶ 2014 Agency Legislative Bill Analysis for SB 702, Agency for Health Care Administration, February 20, 2014.

¹⁷ *Id.* at p. 4.

¹⁸ *Id.*

¹⁹ *Id.* at p. 5.

²⁰ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Bean

4-01182-14

2014702__

1 A bill to be entitled
 2 An act relating to pharmacy audits; creating s.
 3 465.1885, F.S.; enumerating the rights of pharmacies
 4 relating to audits of pharmaceutical services which
 5 are conducted by certain entities; exempting audits in
 6 which fraudulent activity is suspected or which are
 7 related to Medicaid claims; establishing a claim for
 8 civil damages if the pharmacy's rights are violated;
 9 providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Section 465.1885, Florida Statutes, is created
 14 to read:
 15 465.1885 Pharmacy audits; rights.—
 16 (1) If an audit of the records of a pharmacy licensed under
 17 this chapter is conducted directly or indirectly by a managed
 18 care company, an insurance company, a third-party payor, a
 19 pharmacy benefit manager, or an entity that represents
 20 responsible parties such as companies or groups, referred to as
 21 an "entity" in this section, the pharmacy has the following
 22 rights:
 23 (a) To be notified at least 7 calendar days before the
 24 initial on-site audit for each audit cycle.
 25 (b) To have the on-site audit scheduled after the first 5
 26 calendar days of a month unless the pharmacist consents
 27 otherwise.
 28 (c) To have the audit period limited to 24 months after the
 29 date a claim is submitted to or adjudicated by the entity.

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

4-01182-14

2014702__

30 (d) To have an audit that requires clinical or professional
 31 judgment conducted by or in consultation with a pharmacist.
 32 (e) To use the records of a hospital, physician, or other
 33 authorized practitioner, which are transmitted by any means of
 34 communication, to validate the pharmacy records.
 35 (f) To be reimbursed for a claim that was retroactively
 36 denied for a clerical error, typographical error, scrivener's
 37 error, or computer error if the prescription was properly and
 38 correctly dispensed, unless a pattern of such errors exists or
 39 fraudulent billing is alleged.
 40 (g) To receive the preliminary audit report within 90 days
 41 after the conclusion of the audit.
 42 (h) To produce documentation to address a discrepancy or
 43 audit finding within 10 business days after the preliminary
 44 audit report is delivered to the pharmacy.
 45 (i) To receive the final audit report within 6 months after
 46 receiving the preliminary audit report.
 47 (j) To have recoupment or penalties based on actual
 48 overpayments and not according to the accounting practice of
 49 extrapolation.
 50 (2) The rights contained in this section do not apply to
 51 audits in which fraudulent activity is suspected or to audits
 52 related to fee-for-service claims under the Medicaid program.
 53 (3) A pharmacy injured as a result of a willful violation
 54 of this section shall have a civil cause of action for treble
 55 damages, reasonable attorney fees, and costs.
 56 Section 2. This act shall take effect July 1, 2014.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

February 12, 2014

The Honorable Kelli Stargel
Chair, Regulated Industries Committee
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Stargel:

This letter is to request to have my bill *SB 702 relating Pharmacy Audits* be heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink that reads "Aaron Bean".

Aaron Bean
State Senator, 4th District

Cc: Patrick "Booter" Imhof, Staff Director
Lynn Koon, Committee Administrative Assistant

/jk

REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 836

INTRODUCER: Senator Bean

SUBJECT: Medical Gas

DATE: March 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Niles	Imhof	RI	Pre-meeting
2.			HP	

I. Summary:

SB 836 removes definitions and regulations related to medical gas from Part 1 of the “Florida Drug and Cosmetic Act” and creates new sections that are described as Part III “Medical gas” under the act.

The bill provides permit application procedures and permit requirements for medical gas wholesale distributors, medical gas manufacturers, and medical oxygen retail establishments. The bill grants the Department of Business and Professional Regulation (department) the authority to adopt rules related to permits, including application approval or denial, permit revocation, and changes relevant to permit status.

The bill requires specific storage and security procedures related to medical gas. The bill requires wholesale distributors of medical gas to examine medical gas containers, act in due diligence, establish and maintain records regarding receipt and distribution of medical gas, and to establish specific policies and procedures to deal with normal business activity as well as emergency and theft situations.

The bill lays out prohibited and criminal acts in relation to medical gas and enforcement regarding these acts and this part.

The bill provides an effective date of October 1, 2014.

II. Present Situation:

Currently, there are two parts making up ch. 499, F.S., one covering drug, cosmetic, and household products, and the second covering ether. Sections 499.001-499.079, F.S, make up the “Florida Drug and Cosmetic Act.” Medical gas is covered in the first part under drug, cosmetic and household products.

Definitions

Section 499.003(11), F.S., defines “compressed medical gas” as any liquefied or vaporized gas that is a prescription drug, whether it is alone or in combination with other gases.

Section 499.003(46), F.S., defines “prescription medical oxygen” as oxygen USP¹ which is a drug that can only be sold by the order or prescription of a practitioner authorized by law to prescribe. The label of prescription medical oxygen must comply with current labeling requirements for oxygen under the Federal Food, Drug, and Cosmetic Act.

Section 499.003(55), F.S., defines a “wholesale distributor” as any person engaged in wholesale distribution of prescription drugs in or into this state, including, but not limited to, manufacturers; repackagers; own-label distributors; jobbers; private-label distributors; brokers; warehouses, including manufacturers’ and distributors’ warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; exporters; retail pharmacies; and the agents thereof that conduct wholesale distributions.

Section 409.9201(1), F.S., describes medical fraud and s. 409.9201(1)(a), F.S., defines “prescription drug” as any drug, including, but not limited to, finished dosage forms or active ingredients that are subject to, defined by, or described in the Federal Food, Drug, and Cosmetic Act or by s. 465.003(8), s. 499.003(46) or (53) or s. 499.007(13), F.S.

Permits

Section 499.01(1), F.S., lists entities requiring permits and describes them in detail under s. 499.01(2), F.S., including permits for a medical oxygen retail establishment, a compressed medical gas wholesale distributor, and a compressed medical gas manufacturer.

A compressed medical gas wholesale distributor is limited to the wholesale distribution of compressed medical gases to other than the consumer or patient.² A compressed medical gas manufacturer permit is required for any person that engages in the manufacture of compressed medical gases or repackages compressed medical gases from one container to another.³ A medical gas retail establishment permit is required for any person who sells medical oxygen to patients only.⁴ Permit holders are overseen by the Department of Business and Professional Regulation (department) under the Division of Drugs, Devices and Cosmetics.

Drug Wholesale Distributor Advisory Council

Section 499.01211, F.S., creates the Drug Wholesale Distributor Advisory Council (council). The council meets each calendar quarter to review this part of the Florida Statutes and the rules adopted to administer this part annually, provide input to the department, and to make recommendations to minimize the impact of regulation of the wholesale distribution industry

¹ The United States Pharmacopoeia (USP) is a list of drugs licensed for use in the U.S. with standards necessary to determine purity suitable for persons.

²Florida Department of Business and Professional Regulation, Compressed Medical Gas Wholesale Distributor, *available at* www.myfloridalicense.com/dbpr/ddc/CompressedMedicalGasesWholesaleDistributor.html (Last visited March 4, 2014).

³ Florida Department of Business and Professional Regulation, Compressed Medical Gas Manufacturer, *available at* www.myfloridalicense.com/dbpr/ddc/CompressedMedicalGasesManufacturer.html (Last visited March 4, 2014).

⁴ Florida Department of Business and Professional Regulation, Medical Oxygen Retail Establishment, *available at* <http://www.myfloridalicense.com/dbpr/ddc/MedicalOxygenRetail.html> (Last visited March 4, 2014).

while ensuring protection of the public health. The council consists of eleven members including the Secretary of Business and Professional Regulation, or his or her designee, and the Secretary of Health Care Administration, or her or his designee. The remaining nine members are appointed by the Secretary of Business and Professional Regulation to a term of four years each, as follows:

- Three different persons each of whom is employed by a different prescription drug wholesale distributor licensed under this part which operates nationally and is a primary wholesale distributor, as defined in s. 499.003(47), F.S.;
- One person employed by a prescription drug wholesale distributor licensed under this part which is a secondary wholesale distributor, as defined in s. 499.003(52), F.S.;
- One person employed by a retail pharmacy chain located in this state;
- One person who is a member of the Board of Pharmacy and is a pharmacist licensed under ch. 465, F.S.;
- One person who is a physician licensed pursuant to ch. 458, F.S., or ch. 459, F.S.;
- One person who is an employee of a hospital licensed pursuant to ch.395, F.S., and is a pharmacist licensed pursuant to ch.465, F.S.; and
- One person who is an employee of a pharmaceutical manufacturer.

Compressed Gas Association

According to the Compressed Gas Association (association), the association has been dedicated to the development and promotion of safety standards and safe practices in the industrial gas industry since 1913.⁵ Their mission is to promote safe, secure, and environmentally responsible manufacture, transportation, storage, transfilling, and disposal of industrial and medical gases and their containers.⁶ Their activities include the manufacture, transportation, storage, transfilling, and disposal of compressed gas and the containers and valves which hold the compressed gases. Their scope includes related apparatus if such apparatus is necessary for the safe dispensing or delivery of the gases in a commercial, industrial, research, or medical application along with providing safety information or warnings about the chemical or physical properties of gases and their containers.⁷ The association defines industrial and medical gases as liquefied, nonliquefied, dissolved, or cryogenic gases.⁸

III. Effect of Proposed Changes:

The bill creates Part III of ch. 499, F.S., entitled “Medical Gas,” ss. 499.81-499.95, F.S.

Definitions

The bill deletes s. 499.003(11), F.S., defining “compressed medical gas,” and s. 499.003(46), F.S., defining “prescription medical oxygen.” The bill adds new definitions relevant to medical gas, including subsection (32), as follows: “Medical gas is defined in accordance with the federal act and means a liquefied or vaporized gas that is a prescription drug, regardless of whether it is alone or combined with other gases.” The bill deletes cross-references to the old sections and adds the new section throughout the bill where necessary.

⁵ Compressed Gas Association, About Us, available at <http://www.cganet.com/about.php> (Last visited March 4, 2014).

⁶ Compressed Gas Association, CGA Mission, available at <http://www.cganet.com/mission.php> (last visited March 4, 2014).

⁷ *Id.*

⁸ *Id.*

Permits

The bill deletes medical oxygen retail establishment, compressed medical gas wholesale distributor, and compressed medical gas manufacturer as entities requiring permits under s. 499.01(1), F.S. The bill creates s. 499.82, F.S., providing for permits associated with medical gas. A person or establishment intending to distribute medical gas within or into this state must obtain the applicable permit before operating. The following are authorized to receive medical gas:

- Permitted medical gas manufacturers or permitted wholesale distributors;
- Licensed pharmacies or health care entities;
- People authorized to receive emergency use oxygen without a prescription;
- Locations with automated external defibrillation machines where emergency use oxygen is intended to be used with such machines; or
- Companies that need medical gas in the installation and refurbishment of piping and equipment used to contain or administer medical gas.

The bill sets forth requirements for wholesale distributors. They may not operate from a residence, except delivery by home respiratory care technicians. Each location must be permitted. Out-of-state wholesale distributors must be legally authorized as a wholesale distributor in their state of residence or incorporation to provide services in Florida.

The bill establishes three types of permits, a medical gas wholesale distributor permit, a medical gas manufacturer permit, and a medical oxygen retail establishment permit.

A *medical gas wholesale distributor permit* is required for wholesale distribution within or into Florida. The permit:

- Does not authorize distribution to a consumer or patient;
- Requires medical gas be in the same container as obtained with no further manufacturing operations performed; and
- Prohibits distributor to possess or engage in the wholesale distribution of other prescription drugs.

A *medical gas manufacturer permit* is required for a person manufacturing⁹ medical gas and distributing such medical gas within or into this state. A medical gas manufacturer:

- May not manufacture or possess another prescription drug without obtaining the appropriate permit;
- May engage in the wholesale distribution of medical gas manufactured at permitted establishment if complying with this part and applicable rules; and
- Must comply with all appropriate good manufacturing practices.

A *medical oxygen retail establishment permit* is required for a person, except a pharmacy under chapter 465, F.S., who sells prescription medical oxygen directly to patients. Sales must be based upon an order or prescription. A medical oxygen retail establishment:

⁹Manufacturing can be done by physical air separation, chemical action, purification, or filling containers using a liquid-to-liquid, liquid-to-gas, or gas-to-gas process.

- May not possess, purchase, sell, or trade a prescription drug other than medical oxygen without obtaining other appropriate permits;
- May not receive back into its inventory any prescription medical oxygen sold pursuant to a licensed practitioner's order;
- May refill a prescription medical oxygen container for a patient based on an authorized order or prescription, and shall comply with all appropriate good manufacturing practices if doing so; and
- Must comply with storage and handling requirements under s. 499.84, F.S.

The bill creates s. 499.821, F.S., granting the department the authority to adopt rules relating to permit applications and describing the application requirements for permits listed in s. 499.82, F.S. The fee for permits are removed from s. 499.041, F.S., and added to s. 499.821(4), F.S., and s. 499.822, F.S., provides that permits expire after two years, provides renewal procedures, and authorizes the department to adopt rules and a reasonable fee for renewal.

The bill creates s. 499.823, F.S., granting the department the authority to deny a permit or renewal application based on relevant factors including experience, previous noncompliance, criminal background, and other qualifications that the department considers relevant to and consistent with public health and safety.

The bill creates s. 499.824, F.S., restricting permit use to the person or entity granted but allowing specific changes to be made by the approval of the department. A change of location may be made with prior notification and payment of a change-of-location fee not to exceed \$100. Change of ownership will require a new permit prior to the transfer of the majority of the ownership, controlling interest, or legal liability. If the new-owner-applicant is already a permit holder, the application is not required until the date of the transfer, sale, assignment or lease and this applicant may distribute under the permit number of the previous owner from the date of transfer until the date of application approval. Change of name will not require a new permit, but will require the permit holder to notify the department before the change.

Closure of the business will require a permit holder to notify the department and indicate how the inventory will be dispersed. A permit holder in good standing may apply to change the type of permit held and will be required to pay the difference in fees. The department may revoke a permit for noncompliance with these requirements.

Medical Gas Storage and Security Measures

The bill creates s. 499.84, F.S., setting out the minimum requirements for storage and handling of medical gas and mandating that medical gas be stored in accordance to manufacturers' recommendations, or in their absence, according to applicable industry standards. Medical gas must be packaged in accordance with official compendium standards such as the USP-NF. The United States Pharmacopeia and The National Formulary (USP-NF) is a book of public pharmacopeial standards.¹⁰

The bill creates s. 499.85, F.S., requiring security measures for wholesale distribution facilities and vehicles used for delivering oxygen-related equipment. Under this security section, the

¹⁰ U.S. Pharmacopial Convention, USP-NF, available at <http://www.usp.org/usp-nf> (Last visited March 4, 2014).

department is granted the authority to adopt rules governing wholesale distribution of prescription medical oxygen for emergency use by persons authorized to receive emergency use oxygen which should be federal rules, unless specifically directed otherwise.

Wholesale Distributor Requirements

The bill requires examination of medical gas containers by wholesale distributors and review of records documenting the acquisition of the medical gas. The bill provides procedures to handle defective gas or containers, and requires damaged, misbranded or adulterated medical gas to be quarantined until returned to the manufacturer or wholesale distributor, or until it is destroyed. If medical gas is adulterated or misbranded, or suspected as such, notice shall be provided to the manufacturer or wholesale distributor from which the medical gas was acquired and to the appropriate boards and federal regulatory bodies.

The bill requires wholesale distributors to act with due diligence, obtaining appropriate documentation of registration from the wholesale distributor or manufacturer before an initial acquisition of medical gas from that distributor or manufacturer, except from a manufacturer that is registered with the FDA and proof of the registration is provided along with proof of inspection within the last three years or proof of compliance with industry standards or guidelines as identified by the department.

The bill requires wholesale distributors to establish and maintain a record of transactions regarding the receipt and distribution, or other disposition, of medical gases, and the information to be included. These records constitute an audit trail and must contain information sufficient to perform a recall of medical gas in compliance with 21 C.F.R. s. 211.196 and 21 C.F.R. s. 820.160(b). A pedigree paper is not required for the wholesale distribution of medical gas.

The bill requires wholesale distributors to establish, maintain, and adhere to written policies and procedures for the receipt, security, storage, transport, shipping, and wholesale distribution of medical gas and for maintaining inventory and correcting all errors in inventory associated with nitrous oxide. Procedures are required for handling recalls and withdrawals, preparing for and avoiding crisis, and reporting criminal activity involving nitrous oxide.

Prohibited and Criminal Acts

The bill prohibits a person from performing or aiding the performance of the following:

- Manufacture, sale, or delivery, or the holding or offering for sale, of medical gas that is adulterated, misbranded, or has otherwise been rendered unfit for distribution;
- Adulterating or misbranding of medical gas;
- Altering, mutilating, destroying, obliterating, or removing the whole or any part of the product labeling of medical gas or the willful commission of any other act of misbranding;
- Purchasing or receiving medical gas from a person who is not authorized by permit to distribute wholesale medical gas or who is exempted from permitting requirements to distribute wholesale medical gas to such purchaser or recipient;
- Knowing and willful sale or transfer of medical gas to a recipient who is not legally authorized to receive medical gas, except for limited distributions as necessary to protect the health, safety, or welfare of a patient in his or her home;
- Failing to maintain or provide records required under this part;

- Providing the department or any of its representatives or any state or federal official with false or fraudulent records or making false or fraudulent statements regarding this part and its implementing regulations;
- Wholesale distribution of medical gas that was purchased by a health care entity without an authorized recipient, donated or supplied at a reduced price to a charitable organization, or stolen or obtained by fraud or deceit;
- Operating without a valid permit;
- Obtaining of medical gas by fraud, deceit, or misrepresentation or engaging in misrepresentation or fraud in the distribution of medical gas;
- Except for oxygen USP in emergency situations, the distribution of medical gas to a patient without an order or prescription from a licensed practitioner authorized by law to prescribe;
- Distributing medical gas that was previously dispensed by a pharmacy or a licensed practitioner authorized by law to prescribe;
- Distributing of medical gas or medical gas-related equipment to a patient, unless the patient has been provided with the appropriate information and counseling on the use, storage, and disposal of medical gas;
- Failing to report an act prohibited under this part and its implementing regulations; and
- Failing to exercise due diligence as provided in s. 499.88, F.S.

The bill provides that a person commits a felony in the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., if he or she:

- With intent to defraud or deceive adulterates or misbrands medical gas;
- Engages in the wholesale distribution of, and knowingly purchases or receives, medical gas from a person not legally authorized to distribute medical gas;
- Engages in the wholesale distribution of, and knowingly sells, barter, brokers, or transfers, medical gas to a person not legally authorized to purchase medical gas in the jurisdiction in which the person receives the medical gas.
- Knowingly, falsely creates a label for medical gas or knowingly, falsely represents a factual matter contained in a label for medical gas.

A court with authority over a person that convicts a person who violates this section shall order that person to forfeit to the state real or personal property used or intended to be used to commit such a violation and that is constituting, derived from, or traceable to the gross proceeds gained as a result of the violation. Moneys or proceeds from the sale of assets ordered to be forfeited shall be equitably divided between the department and agencies involved in the investigation and prosecution that led to the conviction. Other property ordered to be forfeited after conviction of a defendant may, at the discretion of the investigating agencies, be placed into official use by the department or the agencies involved in the investigation and prosecution.

Drug Wholesale Distributor Advisory Council

The bill adds an additional position on the council, now twelve members, appointed by the *Compressed Gas Association* who is an employee of a permitted medical gas wholesale distributor or manufacturer.

Inspections

The bill allows the department to require a facility engaged in the manufacturing or wholesale distribution of medical gas to undergo an inspection, and the department may recognize other state inspections if that state's laws are determined to be substantially equivalent with this state's laws. A manufacturing facility registered with the FDA and verified as such and providing proof of an inspection within the past three years is exempt from inspection.

The bill requires a wholesale distributor to have readily available its state permits and its most recent inspection report administered by the department.

The bill allows the department to authorize a third party to inspect wholesale distributors who distribute within or into this state.

The bill requires the department to ensure that information identified as a trade secret, as defined in s. 812.081, F.S., is maintained and remains confidential while it is retained by the department.

Enforcement

The bill allows the department to collect evidence and testimony for the purposes of initiating an investigation or proceeding under this part. A state, county, or municipal attorney shall timely institute proceedings and prosecute violations reported to them by the department or designated agent in a manner required by law.

The bill provides that the provisions of part III are cumulative and do not repeal or affect the power, duty, or authority of the department, but establishes that part III controls where it conflicts with other law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Unknown.

C. Government Sector Impact:

Expenses associated with the additional Drug Wholesale Distributor Advisory Council member are indeterminate but are expected to be minimal and can be funded with existing resources.¹¹ The members of the council are not paid employees; they serve without compensation.¹² The Drugs, Devices and Cosmetics Division under the department is responsible for expenses associated with the logistics of the council meetings¹³

The bill provides that fees collected under part III are to be used to administer “this part,” which seems to limit the fees and monies collected to use for administering only part III. This may require separate accounting and recordkeeping to be set up by the department’s fiscal unit. It is unclear at this time what the estimated fees and costs associated with medical gas regulation would be, and this is a change from the way the division currently operates.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 283-291 set forth a list of entities authorized to receive medical gas, but do not clearly indicate if these entities must reside in Florida; the presumption is that they must reside in Florida, but this could be an issue that is subject to an equally plausible interpretation to the opposite.¹⁵

Permit Change Issues according to the department¹⁶

- **Change of Location:** The bill requires prior notice to the department, but does not establish the minimum prior notice, e.g., 30 days. The department has a responsibility to ensure that the new location is suitable for the activities conducted. Without prior minimum notification to the department, it will be difficult to adequately coordinate limited resources to conduct an inspection.
- **Change of Ownership:** The bill requires prior notice to the department, but does not establish the minimum prior notice, e.g., 30 days. The proposed language allows the new applicant to operate under the old permit holder’s number until such time as a decision is made on the change of ownership application. A notice requirement would allow the department the ability to determine suitability of the facility and to properly conduct

¹¹ 2014 Legislative Bill Analysis for SB 836, Department of Business and Professional Regulation (Feb. 20, 2014).

¹² *Id.*

¹³ *Id.*

¹⁴ 2014 Legislative Bill Analysis for SB 836, Department of Business and Professional Regulation (Feb. 20, 2014).

¹⁵ 2014 Legislative Bill Analysis for SB 836, Department of Business and Professional Regulation (Feb. 20, 2014).

¹⁶ *Id.*

background screening on the new owners. Additionally, the continued use of the prior applicant's permit number will increase the susceptibility of Medicaid fraud or overpayment for services due to confusion over the business that is actually supplying the services.

- Change of Name: The bill does not establish minimum prior notice, e.g., 30 days.
- If enacted, an applicant could purchase another entity, change the name and the location, only give the department one day notice, continue to operate under the prior entity's permit number at a new location under a new name, and bill Medicaid for services rendered to Medicaid recipients. The department would have difficulty in allocating its resources to process the applications and conduct inspections in a timely manner.

The bill allows the Compressed Gas Association to appoint a person to the Drug Wholesale Distributor Advisory Council. Currently, the Secretary makes the appointments of these members, with the exception of the Agency for Health Care Administration's representative.¹⁷

Line 122, the definition of "adulteration" in the bill does not include transfer or possession by an unauthorized source.¹⁸ Generally under the current law, if an unauthorized person holds, transfers, purchases, or sells a prescription drug, that drug becomes adulterated.¹⁹ Currently, if medical oxygen is delivered to a patient who does not have a current, valid prescription for medical oxygen, then the medical oxygen could be deemed adulterated and thus unfit for consumption.²⁰ The bill may reduce the incentive of providers to verify current prescriptions before making deliveries.²¹

Line 286-287 of the bill states that "people authorized to receive emergency use oxygen without a prescription" are legally authorized to receive medical gas. One interpretation of that passage might allow anyone authorized to receive emergency use oxygen without a prescription to receive any medical gas.²²

Line 405-407 of the bill creates a possible conflict between the department and applicants when an applicant identifies something in the application as "trade secret" and expects protection, but the department determines the marked documents do not meet the criteria of s. 812.081, F.S.²³

Line 712-713 of the bill removes any requirement to show the transaction history in one document. This may make it more difficult to review an audit trail, especially in cases of product recalls.²⁴

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 499.001, 499.003, 409.9201, 460.403, 465.0265, 499.01, 499.0121, 499.01211, 499.01212, 499.015, 499.024, 499.041, 499.05, 499.051, 499.066, 499.0661, and 499.067.

This bill creates the following sections of the Florida Statutes: 499.81, 499.95, 499.82, 499.821, 499.822, 499.823, 499.824, 499.83, 499.84, 499.85, 499.86, 499.87, 499.88, 499.89, 499.90, 499.91, 499.92, 499.93, and 499.94.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



603004

LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 405 - 411

and insert:

(3) An applicant must submit a reasonable fee, to be

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 16 - 19

and insert:

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603004

11

to ch. 120, F.S.; authorizing the department to



246424

LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Thrasher) recommended the following:

Senate Amendment

Delete lines 479 - 511

and insert:

this part must notify the department 30 days before changing location. The department shall set a change-of-location fee not to exceed \$100.

(b) Change in ownership.—If a majority of the ownership or controlling interest of a permitted establishment is transferred or assigned or if a lessee agrees to undertake or provide



246424

11 services such that legal liability for operation of the
12 establishment will rest with the lessee, an application for a
13 new permit is required. The application for the new permit must
14 be submitted 30 days before the change of ownership. However, if
15 an applicant is a permitholder or is wholly owned by or wholly
16 owns a permitholder under this part, the application for the new
17 permit must be made by the date of the sale, transfer,
18 assignment, or lease. Between the date of the change of
19 ownership and the date of the application approval or denial by
20 the department, an applicant may distribute under the permit
21 number of the previous owner.

22 (c) *Change of name.*—A permitholder may change its name
23 without submitting a new permit application. However, the
24 permitholder must notify the department 30 days before changing
25 its name. The permitholder may continue to operate the
26 establishment while the notification is being processed.

27 (d) *Closure.*—If an establishment permitted under this part
28 closes, the owner must notify the department, in writing, before
29 the effective date of the closure and must:

- 30 1. Return the permit to the department; and
31 2. If the permittee is authorized to distribute medical
32 gas, indicate the disposition of such medical gas, including the
33 name, address, and inventory, and provide the name and address
34 of a person to contact regarding access to the records that are
35 required to be maintained under this part. Transfer of ownership
36 of medical gas may be made only to persons authorized to receive
37 medical gas pursuant to this part.

38 (e) *Change in information.*—Any change in information
39 required under this part, other than a change of information as



246424

40 set forth in paragraphs (a)-(d), must be submitted to the
41 department within 30 days after such change.



725522

LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Thrasher) recommended the following:

Senate Amendment

Delete lines 794 - 796
and insert:
gas, except that a violation does not exist as to a distributor
that provides oxygen to a permitted medical oxygen retail
establishment if the distributor is out of compliance with only
the change of location notice requirement under s. 499.824.

Delete line 845



725522

11 and insert:
12 jurisdiction in which the person receives the medical gas,
13 except that a violation does not exist as to a distributor that
14 provides oxygen to a permitted medical oxygen retail
15 establishment if the distributor is out of compliance with only
16 the change of location notice requirement under s. 499.824.



279808

LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 873 - 901

and insert:

the manufacture, retail sale, or wholesale distribution of
medical gas to undergo an inspection in accordance with a
schedule to be determined by the department.

(2) The department may recognize other state inspections of
a manufacturer or wholesale distributor in another state if such
state's laws are deemed to be substantially equivalent to the



279808

11 laws of this state.

12 (3) A manufacturing facility is exempt from inspection by
13 the department if the facility:

14 (a) Is currently registered with the FDA in accordance with
15 s. 510 of the federal act and can provide proof of such
16 registration, such as a copy of the online verification page;
17 and

18 (b) Can provide proof of inspection within the past 3 years
19 by the FDA or, if the facility is located in another state, by
20 another governmental entity charged with regulation of good
21 manufacturing practices related to medical gas.

22 (4) A wholesale distributor must exhibit or have readily
23 available its state permits and its most recent inspection
24 report administered by the department. The department may
25 authorize a third party to inspect wholesale distributors who
26 distribute within or into this state.

27 Section 19. Section 499.931, Florida Statutes, is created
28 to read:

29 499.931 Trade secret information.—Information required to
30 be submitted under this part which is a trade secret as defined
31 in s. 812.081(1)(c) and designated as a trade secret by an
32 applicant or permit holder must be maintained as required under
33 s. 499.051.

34
35 ===== T I T L E A M E N D M E N T =====

36 And the title is amended as follows:

37 Delete lines 79 - 82

38 and insert:

39 to inspect wholesale distributors; creating s.



279808

40 499.931, F.S.; providing that trade secret information
41 required to submitted pursuant to this part must be
42 maintained by the department; creating s.

By Senator Bean

4-00674-14

2014836__

1 A bill to be entitled
 2 An act relating to medical gas; creating part III of
 3 ch. 499, F.S., entitled "Medical Gas"; creating s.
 4 499.81, F.S.; defining terms; creating s. 499.82,
 5 F.S.; requiring a person or establishment located
 6 inside or outside the state which intends to
 7 distribute medical gas within or into this state to
 8 obtain an applicable permit before operating; listing
 9 the people or entities that are legally authorized to
 10 receive medical gas; establishing categories of
 11 permits and setting requirements for each; creating s.
 12 499.821, F.S.; requiring the Department of Business
 13 and Professional Regulation to establish the form and
 14 content of an application; stating that an applicant
 15 who is denied a permit has a right of review pursuant
 16 to ch. 120, F.S.; requiring the department to ensure
 17 that information obtained during the application
 18 process identified as trade secret is maintained and
 19 remains confidential; authorizing the department to
 20 set fees within certain parameters; creating s.
 21 499.822, F.S.; requiring a permit to expire 2 years
 22 after the last day of the month in which the permit
 23 was issued; providing requirements for the renewal of
 24 a permit; requiring the department to adopt rules for
 25 the renewal of permits; creating s. 499.823, F.S.;
 26 authorizing the department to consider certain factors
 27 in determining the eligibility of an applicant;
 28 creating s. 499.824, F.S.; authorizing the department
 29 to approve certain permitholder changes; authorizing

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

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30 the department to revoke the permit of a person that
 31 fails to comply with this section; creating s. 499.83,
 32 F.S.; requiring an applicant for or a holder of a
 33 permit as a wholesale distributor of medical gas or as
 34 a medical oxygen retailer to designate a registered
 35 agent; creating s. 499.84, F.S.; setting the minimum
 36 requirements for the storage and handling of medical
 37 gas; creating s. 499.85, F.S.; requiring a wholesale
 38 distributor of medical gas to implement measures to
 39 secure the location from unauthorized entry; setting
 40 facility requirements for security purposes;
 41 authorizing a vehicle used for on-call delivery of
 42 oxygen USP and oxygen-related equipment to be parked
 43 at a place of residence; requiring the department to
 44 adopt rules governing the wholesale distribution of
 45 prescription medical oxygen; creating s. 499.86, F.S.;
 46 requiring a wholesale distributor of medical gases to
 47 visually examine an immediate container upon receipt
 48 for identity and to determine if the medical gas
 49 container has been damaged or is otherwise unfit for
 50 distribution; requiring a medical gas container that
 51 is damaged or otherwise unfit for distribution to be
 52 quarantined; requiring outgoing shipments to be
 53 inspected; requiring wholesale distributors to review
 54 certain records; creating s. 499.87, F.S.; authorizing
 55 the return of medical gas that has left the control of
 56 the wholesale distributor; requiring that medical gas
 57 that is damaged, misbranded, or adulterated be
 58 quarantined from other medical gases until it is

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59 destroyed or returned to the manufacturer or wholesale
 60 distributor from which it was acquired; creating s.
 61 499.88, F.S.; requiring a wholesale distributor to
 62 obtain certain information before the initial
 63 acquisition of the medical gas; providing certain
 64 exemptions; creating s. 499.89, F.S.; requiring a
 65 wholesale distributor to establish and maintain
 66 transactional records; providing a retention period
 67 for certain records and requiring that the records be
 68 available for inspection during that period; creating
 69 s. 499.90, F.S.; requiring a wholesale distributor to
 70 establish, maintain, and adhere to certain written
 71 policies and procedures; creating s. 499.91, F.S.;
 72 prohibiting certain acts; creating s. 499.92, F.S.;
 73 establishing criminal penalties; authorizing property
 74 or assets subject to forfeiture to be seized pursuant
 75 to a warrant; creating s. 499.93, F.S.; authorizing
 76 the department to require a facility that engages in
 77 wholesale distribution to undergo an inspection;
 78 authorizing the department to authorize a third party
 79 to inspect wholesale distributors; requiring the
 80 department to ensure that information obtained during
 81 the inspection process identified as trade secret is
 82 maintained and remains confidential; creating s.
 83 499.94, F.S.; requiring fees collected pursuant to
 84 this part to be deposited into the Professional
 85 Regulation Trust Fund; creating s. 499.95, F.S.;
 86 authorizing the department for the purpose of
 87 initiating an investigation or proceeding under this

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88 part to administer oaths, take depositions, issue and
 89 serve subpoenas, and compel attendance of witnesses
 90 and the production of books, papers, documents or
 91 other evidence; requiring an attorney to whom the
 92 department reports a violation of this part to timely
 93 institute proceedings in the court of competent
 94 jurisdiction; exempting minor violations from
 95 reporting requirements at the department's discretion;
 96 providing that this part is cumulative and does not
 97 repeal or affect the power, duty, or authority of the
 98 department; amending ss. 409.9201, 460.403, 465.0265;
 99 conforming provisions to changes made by the act;
 100 amending s. 499.001, F.S.; conforming a provision to
 101 changes made by the act; amending s. 499.003, F.S.;
 102 conforming terminology, deleting a definition, and
 103 defining the term "medical gas"; amending ss. 499.01
 104 and 499.0121, F.S.; conforming provisions to changes
 105 made by the act; amending s. 499.01211, F.S.; changing
 106 the membership of the Drug Wholesale Distributor
 107 Advisory Council; requiring the Compressed Gas
 108 Association to appoint one person to the council;
 109 amending ss. 499.01212, 499.015, 499.024, 499.041,
 110 499.05, 499.051, 499.066, 499.0661, and 499.067, F.S.;
 111 conforming provisions to changes made by the act;
 112 providing an effective date.

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

115
116 Section 1. Part III of chapter 499, Florida Statutes,

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117 consisting of ss. 499.81-499.95, Florida Statutes, is created
 118 and is entitled "Medical Gas."

119 Section 2. Section 499.81, Florida Statutes, is created to
 120 read:

121 499.81 Definitions.—As used in this part, the term:

122 (1) "Adulterated" with respect to medical gas means medical
 123 gas that:

124 (a) Consists, in whole or in part, of impurities or
 125 deleterious substances that exceed normal specifications;

126 (b) Has been produced, prepared, packed, or held under
 127 conditions whereby the gas may have been contaminated, causing
 128 it to be rendered injurious to health; or was manufactured,
 129 processed, packed, or held using methods, facilities, or
 130 controls that do not conform to or are not operated or
 131 administered in conformity with current good manufacturing
 132 practices;

133 (c) Has a container interior that is composed, in whole or
 134 in part, of a poisonous or deleterious substance that may render
 135 the container contents injurious to health; or

136 (d) Has a strength that differs from, or that is of a
 137 quality or purity that fails to meet, the standards established
 138 in the USP-NF, if the gas is purported to be, or is represented
 139 as, medical gas as recognized in the USP-NF. Such a
 140 determination as to strength, quality, or purity must be made in
 141 accordance with the tests or methods of assay set forth in the
 142 USP-NF or a validated equivalent, or, in the absence or
 143 inadequacy of these tests or methods of assay, those prescribed
 144 under the authority of the federal act shall be used. However, a
 145 gas that is purported to be, or is represented as, medical gas

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146 as recognized in the USP-NF but that differs in strength,
 147 quality, or purity from the standards established in the USP-NF
 148 may not be deemed adulterated for purposes of this paragraph if
 149 the difference is plainly stated on its label.

150 (2) "Department" means the Department of Business and
 151 Professional Regulation.

152 (3) "Distribute" or "distribution" means to sell or offer
 153 to sell, deliver or offer to deliver, broker, give away, or
 154 transfer medical gas, by passage of title or by physical
 155 movement. The term does not include:

156 (a) Dispensing or administering medical gas;

157 (b) Delivering or offering to deliver medical gas by a
 158 common carrier in its usual course of business; or

159 (c) A sales activity that takes place in an establishment
 160 that is owned or controlled by a person or business entity
 161 authorized to distribute medical gas within or into this state
 162 or staffed by persons employed by such person, if the location
 163 where the sales activity takes place does not physically store
 164 or transport medical gas.

165 (4) "Emergency use oxygen" means oxygen USP that is
 166 administered without a prescription for an emergency situation
 167 concerning oxygen deficiency or resuscitation and that is in a
 168 container labeled in accordance with FDA standards.

169 (5) "FDA" means the federal Food and Drug Administration.

170 (6) "Federal act" means the federal Food, Drug, and
 171 Cosmetic Act, 21 U.S.C. ss. 301 et seq.

172 (7) "Health care entity" means a person, including an
 173 organization business entity, which provides diagnostic,
 174 medical, surgical, or dental treatment or rehabilitative care.

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175 The term includes a home respiratory care provider or a person
 176 or entity authorized to administer emergency use oxygen, but
 177 does not include a retail pharmacy or wholesale distributor.

178 (8) "Immediate container" means a compressed gas cylinder
 179 or liquid container that contains medical gas. The term does not
 180 include a large-bulk liquid or high pressure container, such as
 181 a storage tank, vehicle-mounted vessel, trailer, or railcar.

182 (9) "Intracompany transaction" means a transaction between
 183 divisions, subsidiaries, parents, or affiliated or related
 184 companies under the common ownership and control of a single
 185 corporate entity.

186 (10) "Label" means a display of a written, printed, or
 187 graphic matter upon an immediate container. The term does not
 188 include the letters, numbers, or symbols stamped onto a
 189 container as required by the United States Department of
 190 Transportation.

191 (11) "Manufacturer" means a person or entity that
 192 manufactures medical gas in bulk or that transfers the gas or
 193 liquefied gas product from one container to another.

194 (12) "Medical gas" is defined in accordance with the
 195 federal act and means a liquefied or vaporized gas that is a
 196 prescription drug, regardless of whether it is alone or combined
 197 with other gases.

198 (13) "Medical gas-related equipment" means a device used as
 199 an accessory or component part to contain or control flow,
 200 delivery, or pressure during the administration of medical gas,
 201 such as liquid-oxygen base and portable units, pressure
 202 regulators, flow meters, and oxygen concentrators.

203 (14) "Misbranded" means medical gas that has a label that

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204 is false or misleading or a label that does not:

205 (a) Display the name and address of the manufacturer,
 206 packer, or distributor;

207 (b) Provide an accurate statement of the quantity of active
 208 ingredients or show an accurate monograph for the medical gas;
 209 or

210 (c) In the case of mixtures of designated medical gases,
 211 identify the component percentages of each designated medical
 212 gas used to make the mixture.

213 (15) "Prescription medical oxygen" means oxygen USP, a drug
 214 that may be sold only by the order or prescription of a licensed
 215 practitioner authorized by law to prescribe.

216 (16) "USP-NF" or "USP" means the standards published in the
 217 official book, "The United States Pharmacopeia and the National
 218 Formulary."

219 (17) "Wholesale distribution" means the distribution of
 220 medical gas by a wholesale distributor of medical gas to a
 221 person other than a consumer or patient. The term does not
 222 include:

223 (a) The sale, purchase, or trade of a medical gas, an offer
 224 to sell, purchase, or trade a prescription drug or device, or
 225 the dispensing of medical gas pursuant to a prescription;

226 (b) The sale, purchase, or trade of a medical gas or an
 227 offer to sell, purchase, or trade medical gas for an emergency
 228 medical reason that includes, but is not limited to:

229 1. A transfer of a medical gas between wholesale
 230 distributors or between a wholesale distributor and a retail
 231 pharmacy or health care entity to alleviate a temporary shortage
 232 of medical gas resulting from a delay in or an interruption of a

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233 regular distribution schedule;

234 2. Sales to a licensed emergency medical service provider,
 235 such as an ambulance company, a firefighting organization, or a
 236 licensed practitioner authorized to prescribe medical gases;

237 3. Provision of minimal emergency supplies of medical gas
 238 to a nursing home for use in an emergency or during the hours of
 239 the day when necessary medical gas cannot be obtained; or

240 4. Transfers of medical gases to alleviate a temporary
 241 shortage between retail pharmacies;

242 (c) An intracompany transaction;

243 (d) The sale, purchase, or trade of medical gas or an offer
 244 to sell, purchase, or trade medical gas among hospitals,
 245 pharmacies, or other health care entities that are under common
 246 control;

247 (e) The sale, purchase, or trade of medical gas, or the
 248 offer to sell, purchase, or trade medical gas by a charitable
 249 organization that has been granted an exemption under s.
 250 501(c)(3) of the Internal Revenue Code to a nonprofit affiliate
 251 of the organization, to the extent otherwise permitted by law;

252 (f) The purchase or other acquisition of medical gas by a
 253 hospital or other similar health care entity that is a member of
 254 a group purchasing organization, for the hospital's or the
 255 health care entity's own use, from the group purchasing
 256 organization or from another hospital or similar health care
 257 entity that is a member of such organization;

258 (g) The return of residual medical gas that may be
 259 reprocessed in accordance with the manufacturer's procedures or
 260 the return of recalled, expired, damaged, or otherwise
 261 nonsalable medical gas, when returned by a hospital, health care

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262 entity, pharmacy, or charitable institution to a wholesale
 263 distributor;

264 (h) An activity that is exempt from the definition of the
 265 term "wholesale distribution" as provided in s. 499.003; or

266 (i) A transaction that is excluded from the definition of
 267 the term "wholesale distribution" under the federal act or
 268 regulations implemented under the federal act related to medical
 269 gas.

270 (18) "Wholesale distributor" means a person or entity
 271 engaged in the wholesale distribution of medical gas within or
 272 into this state, including, but not limited to, a manufacturer,
 273 an own-label distributor, a private-label distributor, a
 274 warehouse, including a manufacturers' and distributors'
 275 warehouse, and a wholesale medical gas warehouse.

276 Section 3. Section 499.82, Florida Statutes, is created to
 277 read:

278 499.82 Permits.—

279 (1) A person or establishment, located inside or outside
 280 the state, which intends to distribute medical gas within or
 281 into this state must obtain the applicable permit before
 282 operating.

283 (2) All of the following are legally authorized to receive
 284 medical gas: permitted medical gas manufacturers or permitted
 285 wholesale distributors, licensed pharmacies or health care
 286 entities, people authorized to receive emergency use oxygen
 287 without a prescription, locations with automated external
 288 defibrillation machines where emergency use oxygen is intended
 289 to be used with such machines, or companies that need medical
 290 gas in the installation and refurbishment of piping and

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291 equipment used to contain or administer medical gas.

292 (3) An applicant who is a natural person must be at least
 293 18 years of age or an applicant must be managed, controlled, or
 294 overseen, directly or indirectly, by a natural person who is at
 295 least 18 years of age.

296 (4) An out-of-state wholesale distributor that provides
 297 services in this state must be legally authorized as a wholesale
 298 distributor in the state in which it resides or is incorporated.

299 (5) A wholesale distributor may not operate from a place of
 300 residence, and a place of residence may not be granted a permit
 301 or operate under this part, except for the on-call delivery of
 302 home care oxygen by a home respiratory care technician.

303 (6) If wholesale distribution is conducted at more than one
 304 location within this state or more than one location
 305 distributing into this state, each location must be permitted by
 306 the department.

307 (7) The following permits are established:

308 (a) Medical gas wholesale distributor permit.—A medical gas
 309 wholesale distributor permit is required for wholesale
 310 distribution within or into this state.

311 1. Such permit does not authorize distribution to a
 312 consumer or patient.

313 2. The medical gas must be in the container that was
 314 obtained by that wholesale distributor without further
 315 manufacturing operations being performed.

316 3. A wholesale distributor may not possess or engage in the
 317 wholesale distribution of any prescription drug other than
 318 medical gas.

319 (b) Medical gas manufacturer permit.—A medical gas

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320 manufacturer permit is required for a person who engages in the
 321 manufacture of medical gas by physical air separation, chemical
 322 action, purification, or filling containers using a liquid-to-
 323 liquid, liquid-to-gas, or gas-to-gas process and distributes
 324 such medical gas within or into this state. A medical gas
 325 manufacturer:

326 1. May not manufacture or possess a prescription drug other
 327 than medical gas unless the appropriate permit is obtained.

328 2. May engage in the wholesale distribution of medical gas
 329 that is manufactured at the permitted establishment without
 330 obtaining a medical gas wholesale distributor permit, but shall
 331 comply with this part and applicable rules.

332 3. Shall comply with all appropriate state and federal good
 333 manufacturing practices.

334 (c) Medical oxygen retail establishment permit.—A medical
 335 oxygen retail establishment permit is required for a person who
 336 sells prescription medical oxygen directly to patients. Such
 337 sales must be based upon an order or prescription from a
 338 licensed practitioner authorized by law to prescribe. A pharmacy
 339 licensed under chapter 465 is exempt from this paragraph. A
 340 medical oxygen retail establishment:

341 1. May not possess, purchase, sell, or trade a prescription
 342 drug other than medical oxygen unless other appropriate permits
 343 are obtained.

344 2. May refill a prescription medical oxygen container for a
 345 patient based on an order or prescription from a licensed
 346 practitioner authorized by law to prescribe. A medical oxygen
 347 retail establishment that refills prescription medical oxygen
 348 shall comply with all appropriate state and federal good

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349 manufacturing practices.

350 3. Shall comply with the storage and handling requirements
 351 under s. 499.84.

352 4. May not receive back into its inventory any prescription
 353 medical oxygen that it sold pursuant to a licensed
 354 practitioner's order.

355 Section 4. Section 499.821, Florida Statutes, is created to
 356 read:

357 499.821 Permit application.—

358 (1) The department shall establish by rule the form and
 359 content of an application to obtain a permit listed under s.
 360 499.82.

361 (a) An application for a permit must be filed with the
 362 department and must include the following information:

363 1. The trade or business names, including fictitious names,
 364 currently and formerly used by the applicant, which may not be
 365 identical to a name used by an unrelated wholesale distributor
 366 authorized in this state to purchase medical gas.

367 2. The name or names of the owner and operator of the
 368 permittee, if not the same person or entity. The application
 369 must also include the following if the applicant is:

370 a. An individual: the applicant's business address and date
 371 of birth.

372 b. A sole proprietorship: the business address of the sole
 373 proprietor and the name and federal employer identification
 374 number of the business entity.

375 c. A partnership: the business address and date of birth of
 376 each partner and the name and federal employer identification
 377 number of the partnership.

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378 d. A limited liability company: the business address and
 379 title of each company officer, the name and federal employer
 380 identification number of the limited liability company, and the
 381 state of incorporation.

382 e. A corporation: the business address and title of each
 383 corporate officer and director; the name, state of
 384 incorporation, and federal employer identification number of the
 385 corporation; and the name and business address of any parent
 386 company.

387 3. A list of disciplinary actions pertinent to wholesale
 388 distributors of prescription drugs or controlled substances by a
 389 state or federal agency against the applicant seeking to
 390 distribute into this state and against a principal, owner,
 391 director, or officer.

392 4. An address and description of each facility or
 393 warehouse, including a description of the security system for
 394 any location used for medical gas storage or wholesale
 395 distribution.

396 (b) The applicant shall attest in writing that the
 397 information contained in the application is complete and
 398 accurate, that the applicant has not been convicted of or
 399 disciplined for a criminal or prohibited act, and that the
 400 application contains complete disclosure of any past criminal
 401 convictions or violations of state or federal law relating to
 402 medical gases.

403 (2) An applicant that is denied a permit has the right to
 404 review of the department's decision pursuant to chapter 120.

405 (3) Information submitted to the department by an applicant
 406 for the purposes of this section which the applicant identifies

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 407 as trade secret information as defined under s. 812.081 shall be
 408 maintained by the department and remain confidential and exempt
 409 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 410 for as long as the information is retained by the department.

411 (4) An applicant must submit a reasonable fee, to be
 412 determined by the department, in order to obtain a permit. The
 413 fee for a medical gas wholesale distributor permit may not be
 414 less than \$200 or more than \$300 annually. The fee for a medical
 415 gas manufacturer permit may not be less than \$400 or more than
 416 \$500 annually. The fee for a medical oxygen retail establishment
 417 permit may not be less than \$200 or more than \$300 annually.

418 Section 5. Section 499.822, Florida Statutes, is created to
 419 read:

420 499.822 Expiration and renewal of a permit.-

421 (1) A permit issued under this part automatically expires 2
 422 years after the last day of the month in which the permit was
 423 originally issued unless the permit is suspended or revoked
 424 before the automatic expiration date.

425 (2) A permit issued under this part may be renewed by
 426 submitting an application for renewal on a form furnished by the
 427 department and paying the appropriate fee. The application for
 428 renewal must contain a statement by the applicant attesting that
 429 the information is true and correct. If a renewal application
 430 and renewal fee are submitted and postmarked after the
 431 expiration date of the permit, the permit may be renewed only
 432 upon payment of a late renewal delinquent fee of \$100, plus the
 433 required renewal fee, within 60 days after the expiration date.

434 (3) Failure to renew a permit in accordance with this
 435 section precludes future renewal. If a permit has expired and

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 436 cannot be renewed, the person or establishment must submit an
 437 application for a new permit, pay the applicable application
 438 fee, the initial permit fee, and all applicable penalties, and
 439 be issued a new permit by the department before engaging in an
 440 activity that requires a permit under this part.

441 (4) The department shall adopt rules to administer this
 442 section, including setting a reasonable fee for a renewal
 443 application.

444 Section 6. Section 499.823, Florida Statutes, is created to
 445 read:

446 499.823 Minimum qualifications.-The department may deny an
 447 application for a permit or refuse to renew a permit based upon:

448 (1) Whether the applicant has violated, or has been
 449 disciplined by a regulatory agency in any state for violating, a
 450 federal, state, or local law relating to wholesale distribution;

451 (2) The applicant's criminal convictions;

452 (3) The applicant's past experience in manufacturing or
 453 distributing medical gas;

454 (4) Any false or fraudulent material contained in an
 455 application;

456 (5) Suspension, sanction, or revocation of a permit
 457 currently or previously held by the applicant for violations of
 458 a state or federal law relating to medical gas;

459 (6) Compliance with previously granted permit requirements;

460 (7) Compliance with the requirements to maintain or make
 461 available to the department or permitting authority or to a
 462 federal, state, or local law enforcement official records
 463 required to be maintained by a wholesale distributor; and

464 (8) Any other factors or qualifications that the department

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465 considers relevant to and consistent with public health and
466 safety.

467 Section 7. Section 499.824, Florida Statutes, is created to
468 read:

469 499.824 Permitholder changes.-

470 (1) A permit issued by the department is valid only for the
471 person or entity to which it is issued and is not subject to
472 sale, assignment, or other transfer, voluntarily or
473 involuntarily, and is not valid for an establishment other than
474 the establishment for which it was originally issued, except as
475 provided in this part. The department may approve the following
476 changes, and a person or entity may continue to operate in the
477 following manner:

478 (a) Change of location.-A person or entity permitted under
479 this part must notify the department before making a change of
480 location. The department shall set a change-of-location fee not
481 to exceed \$100.

482 (b) Change in ownership.-If a majority of the ownership or
483 controlling interest of a permitted establishment is transferred
484 or assigned or if a lessee agrees to undertake or provide
485 services such that legal liability for operation of the
486 establishment will rest with the lessee, an application for a
487 new permit is required. The application for the new permit must
488 be made before the change of ownership. However, if an applicant
489 is a permitholder or is wholly owned by or wholly owns a
490 permitholder under this part, the application for the new permit
491 must be made by the date of the sale, transfer, assignment, or
492 lease. Between the date of the change of ownership and the date
493 of the application approval or denial by the department, an

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494 applicant may distribute under the permit number of the previous
495 owner.

496 (c) Change of name.-A permitholder may make a change of
497 name without submitting a new permit application. The
498 permitholder must notify the department before making a change
499 of name. The permitholder may continue to operate the
500 establishment while the notification is being processed.

501 (d) Closure.-If an establishment permitted under this part
502 closes, the owner must notify the department, in writing, before
503 the effective date of the closure and must:

504 1. Return the permit to the department; and
505 2. If the permittee is authorized to distribute medical
506 gas, indicate the disposition of such medical gas, including the
507 name, address, and inventory, and provide the name and address
508 of a person to contact regarding access to the records that are
509 required to be maintained under this part. Transfer of ownership
510 of medical gas may be made only to persons authorized to receive
511 medical gas pursuant to this part.

512 (2) Notwithstanding paragraph (1)(a), a permitholder in
513 good standing may change the type of permit issued by completing
514 a new application for the requested permit, paying the amount of
515 the difference in the permit fees, and meeting the applicable
516 permitting requirements for the new permit type. A refund may
517 not be issued if the fee for the new permit is less than the fee
518 that was paid for the original permit. The new permit expires on
519 the expiration date of the original permit being changed.

520 (3) The department may revoke a permit for failure to
521 comply with this section.

522 Section 8. Section 499.83 Florida Statutes, is created to

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523 read:

524 499.83 Registered agent.—An applicant for or a holder of a
 525 permit as a medical gas wholesale distributor or as a medical
 526 oxygen retail establishment shall designate a registered agent
 527 in this state for purposes of service of process. If an
 528 applicant or a permitted wholesale distributor or medical oxygen
 529 retailer fails to designate a registered agent, the Secretary of
 530 State shall be deemed the true and lawful attorney of the
 531 applicant or the permitted wholesale distributor or medical
 532 oxygen retailer, and, in such case, the legal processes in any
 533 action or proceeding against an applicant or permitted wholesale
 534 distributor or medical oxygen retailer which grows out of or
 535 arising from wholesale distribution or retail may be served upon
 536 the Secretary of State. A copy of the service of process shall
 537 be mailed to the applicant or the permitted wholesale
 538 distributor or medical oxygen retailer by the department by
 539 certified mail, return receipt requested, postage prepaid, at
 540 the address of the applicant or the distributor or retailer as
 541 designated on the application for a permit in this state.

542 Section 9. Section 499.84, Florida Statutes, is created to
 543 read:

544 499.84 Minimum requirements for the storage and handling of
 545 medical gas.—

546 (1) A facility that receives, stores, warehouses, handles,
 547 holds, offers, markets, displays, or transports medical gas must
 548 avoid any negative effect on the identity, strength, quality, or
 549 purity of medical gas by:

550 (a) Being constructed in a way that ensures that medical
 551 gas is maintained in accordance with its product labeling

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552 recommendations or in compliance with official compendium
 553 standards, such as the USP-NF;

554 (b) Being of a suitable size and construction that
 555 facilitates cleaning, maintenance, and proper wholesale
 556 distribution;

557 (c) Having an adequate storage area with appropriate
 558 lighting, ventilation, space, equipment, and security
 559 conditions;

560 (d) Having a quarantine area for the storage of medical gas
 561 that is suspected of being misbranded, adulterated, or otherwise
 562 unfit for distribution;

563 (e) Being maintained in an orderly condition;

564 (f) Being in a commercial location, except if a personal
 565 dwelling location is used for the on-call delivery of oxygen USP
 566 for home care use and the person providing on-call delivery is
 567 employed by or acting under a written contract with a permittee;

568 (g) Providing for the secure storage of patient
 569 information, if applicable, by restricting access and
 570 implementing policies and procedures that protect the integrity
 571 and confidentiality of patient information; and

572 (h) Providing and maintaining appropriate inventory
 573 controls in order to detect and document any theft of nitrous
 574 oxide.

575 (2) Medical gas must be stored under appropriate conditions
 576 in accordance with the manufacturers' recommendations on product
 577 labeling and department rules or, in the absence of rules, in
 578 accordance with applicable industry standards. Medical gas must
 579 be packaged in accordance with official compendium standards,
 580 such as the USP-NF.

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581 Section 10. Section 499.85, Florida Statutes, is created to
582 read:

583 499.85 Security.-

584 (1) A facility that engages in wholesale distribution shall
585 implement measures to secure its facility from unauthorized
586 entry. Such measures must include the following:

587 (a) Access from outside the premises must be well-
588 controlled and kept to a minimum.

589 (b) The outside perimeter of the premises must be well-
590 lighted.

591 (c) Areas in which medical gas is held must be restricted
592 by a fence or other system that detects or deters entry after
593 hours and limits access only to authorized personnel.

594 (2) A facility that engages in wholesale distribution must
595 have:

596 (a) A security system that provides protection against
597 theft and, if appropriate, theft that is enabled or obscured by
598 tampering with computers or electronic records.

599 (b) A security system that protects the integrity and
600 confidentiality of data and documents.

601 (3) If a wholesale distributor uses electronic distribution
602 records, he or she must employ, train, and document the training
603 of personnel for the proper use of the applicable technology and
604 equipment.

605 (4) A vehicle used for on-call delivery of oxygen USP and
606 oxygen-related equipment for home care use by a home care
607 provider may be parked at a place of residence. Such vehicle
608 while unattended must be locked and equipped with an audible
609 alarm.

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610 (5) The department shall adopt rules that govern the
611 wholesale distribution of prescription medical oxygen for
612 emergency use by persons authorized to receive emergency use
613 oxygen. Unless the laws of this state specifically direct
614 otherwise, such rules must be consistent with federal rules and
615 regulations, including the labeling requirements of oxygen under
616 the federal act.

617 Section 11. Section 499.86, Florida Statutes, is created to
618 read:

619 499.86 Examination of materials.-

620 (1) A wholesale distributor must visually examine an
621 immediate container upon receipt from the manufacturer in order
622 to identify the medical gas and to determine if the container
623 has been damaged or is otherwise unfit for wholesale
624 distribution. Such examination must occur in a manner that would
625 reveal damage to the container which could suggest possible
626 adulteration or misbranding.

627 (2) A medical gas container that is damaged or otherwise
628 unfit pursuant to subsection (1) must be quarantined from the
629 rest of the stock of medical gas until it is determined that the
630 medical gas in question was not misbranded or adulterated.

631 (3) An outgoing shipment must be inspected for identity and
632 to ensure that medical gas containers that have been damaged in
633 storage or held under improper conditions are not delivered.

634 (4) A wholesale distributor must review records documenting
635 the acquisition of medical gas upon receipt for accuracy and
636 completeness.

637 Section 12. Section 499.87, Florida Statutes, is created to
638 read:

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639 499.87 Returned, damaged, and outdated medical gas.-
 640 (1) Medical gas that has left the control of a wholesale
 641 distributor may be returned to the manufacturer or wholesale
 642 distributor from which it was acquired.
 643 (2) Unless medical gas is reprocessed by a manufacturer
 644 employing proper and adequate controls to ensure the identity,
 645 strength, quality, and purity of the reprocessed medical gas,
 646 the gas may not be resold as a medical gas even if its integrity
 647 was maintained.
 648 (3) Medical gas that has been subjected to improper
 649 conditions, such as a fire, accident, or natural disaster, may
 650 not be salvaged or reprocessed.
 651 (4) Medical gas, including its container, which is damaged,
 652 misbranded, or adulterated must be quarantined from other
 653 medical gases until it is destroyed or returned to the
 654 manufacturer or wholesale distributor from which it was
 655 acquired. External contamination to a medical gas container or
 656 closure system which does not impact the integrity of the
 657 medical gas is not considered damage or adulteration for
 658 purposes of this subsection. If medical gas is adulterated or
 659 misbranded or suspected of being adulterated or misbranded,
 660 notice shall be provided to the manufacturer or wholesale
 661 distributor from which the medical gas was acquired and to the
 662 appropriate boards and federal regulatory bodies.
 663 (5) A medical gas container that has been opened or used
 664 but is not adulterated or misbranded is considered empty and
 665 must be quarantined from nonempty medical gas containers and
 666 returned to the manufacturer or wholesale distributor from which
 667 it was acquired for destruction or reprocessing.

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668 (6) Medical gas, its container, or its associated
 669 documentation or labeling that is suspected of being used in
 670 criminal activity must be retained until its disposition is
 671 authorized by the department or an applicable law enforcement
 672 agency.
 673 Section 13. Section 499.88, Florida Statutes, is created to
 674 read:
 675 499.88 Due diligence.-
 676 (1) A wholesale distributor shall obtain, before the
 677 initial acquisition of medical gas, the following information
 678 from the supplying wholesale distributor or manufacturer:
 679 (a) If a manufacturer is distributing to a wholesale
 680 distributor, evidence that the manufacturer is registered and
 681 the medical gas is listed with the FDA;
 682 (b) If a wholesale distributor is distributing to a
 683 wholesale distributor, evidence that the wholesale distributor
 684 supplying the medical gas is permitted to distribute medical gas
 685 within or into the state;
 686 (c) The name of the contact person for the supplying
 687 manufacturer or wholesale distributor; and
 688 (d) Certification that the manufacturer's or wholesale
 689 distributor's policies and procedures comply with this part.
 690 (2) A wholesale distributor is exempt from obtaining the
 691 information from a manufacturer as required under subsection (1)
 692 if the manufacturer is registered with the FDA in accordance
 693 with s. 510 of the federal act and provides:
 694 (a) Proof of such registration; and
 695 (b) Proof of inspection within the past 3 years by the FDA
 696 or other regulatory body or proof of conformance with industry

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697 standards or guidelines as identified by the department.

698 (3) A manufacturer or wholesale distributor that
 699 distributes to or acquires medical gas from another wholesale
 700 distributor shall provide to or obtain from the distributing or
 701 acquiring manufacturer or distributor the information required
 702 by s. 499.89(1), as applicable.

703 Section 14. Section 499.89, Florida Statutes, is created to
 704 read:

705 499.89 Recordkeeping.-

706 (1) A wholesale distributor shall establish and maintain a
 707 record of transactions regarding the receipt and the
 708 distribution, or other disposition, of medical gases. Such
 709 records constitute an audit trail and must contain information
 710 sufficient to perform a recall of medical gas in compliance with
 711 21 C.F.R. s. 211.196 and 21 C.F.R. s. 820.160(b). Such records
 712 must include all the following information, which need not
 713 appear in the same document:

714 (a) The dates of receipt and wholesale distribution, or
 715 other disposition, of the medical gas.

716 (b) The name, address, permit number, and permit expiration
 717 date for the entity purchasing the medical gas from the
 718 wholesale distributor.

719 (c) The name, address, permit number, and permit expiration
 720 date for the entity receiving the medical gas from the wholesale
 721 distributor, if different from the information required under
 722 paragraph (b).

723 (d) Information sufficient to perform a recall of all
 724 medical gas received or distributed.

725 (2) From the time of their creation, such records shall be

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726 kept for 3 years for high pressure medical gas and for 1 year
 727 for cryogenic or refrigerated liquid medical gas.

728 (3) During the retention period, such records shall be made
 729 available for inspection and photocopying by an authorized
 730 official of a state, federal, or local governmental agency. If
 731 such records are kept at the inspection site or could be
 732 immediately retrieved by electronic means, they shall be made
 733 readily available for authorized inspection during the retention
 734 period. Records kept at a central location apart from the
 735 inspection site and not electronically retrievable shall be made
 736 available for inspection within 2 business days of a request.

737 (4) A pedigree paper is not required for the wholesale
 738 distribution of medical gas.

739 Section 15. Section 499.90, Florida Statutes, is created to
 740 read:

741 499.90 Policies and procedures.-A wholesale distributor
 742 shall establish, maintain, and adhere to written policies and
 743 procedures for the receipt, security, storage, transport,
 744 shipping, and wholesale distribution of medical gas and shall
 745 establish, maintain, and adhere to procedures for maintaining
 746 inventories; for identifying, recording, and reporting losses or
 747 thefts; and for correcting all errors and inaccuracies in
 748 inventories associated with nitrous oxide. A wholesale
 749 distributor shall include in its written policies and procedures
 750 the following:

751 (1) A procedure for handling recalls and withdrawals of
 752 medical gas. Such procedure must deal with recalls and
 753 withdrawals due to:

754 (a) Action initiated at the request of the FDA or any

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755 federal, state, or local law enforcement or other government
 756 agency, including the department; or

757 (b) Voluntary action by the manufacturer of medical gas to
 758 remove defective or potentially defective medical gases from the
 759 market.

760 (2) A procedure preparing for, protecting against, and
 761 handling a crisis that affects the security or operation of a
 762 facility in the event of a strike, fire, flood, or other natural
 763 disaster or other situations of local, state, or national
 764 emergency.

765 (3) A procedure for reporting criminal or suspected
 766 criminal activity involving the inventory of nitrous oxide to
 767 the department and to applicable law enforcement agencies within
 768 3 business days after becoming aware of the criminal or
 769 suspected criminal activity.

770 Section 16. Section 499.91, Florida Statutes, is created to
 771 read:

772 499.91 Prohibited acts.—A person may not perform or cause
 773 the performance of, or aid and abet in, any of the following
 774 acts in this state:

775 (1) The manufacture, sale, or delivery, or the holding or
 776 offering for sale, of medical gas that is adulterated,
 777 misbranded, or has otherwise been rendered unfit for
 778 distribution.

779 (2) The adulteration or misbranding of medical gas.

780 (3) The receipt of medical gas that is adulterated,
 781 misbranded, stolen, or obtained by fraud or deceit or the
 782 delivery or proffered delivery of such medical gas for pay or
 783 otherwise.

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784 (4) The alteration, mutilation, destruction, obliteration,
 785 or removal of the whole or any part of the product labeling of
 786 medical gas or the willful commission of any other act with
 787 respect to medical gas that results in it being misbranded.

788 (5) The purchase or receipt of medical gas from a person
 789 who is not authorized by permit to distribute wholesale medical
 790 gas or who is exempted from permitting requirements to
 791 distribute wholesale medical gas to such purchaser or recipient.

792 (6) The knowing and willful sale or transfer of medical gas
 793 to a recipient who is not legally authorized to receive medical
 794 gas, except for limited distributions of medical oxygen as
 795 necessary to protect the health, safety, or welfare of a patient
 796 in his or her home.

797 (7) The failure to maintain or provide records required
 798 under this part and its implementing regulations.

799 (8) Providing the department or any of its representatives
 800 or any state or federal official with false or fraudulent
 801 records or making false or fraudulent statements regarding this
 802 part and its implementing regulations.

803 (9) The wholesale distribution of medical gas that was:

804 (a) Purchased by a public or private hospital or other
 805 health care entity, except for the physical distribution of such
 806 medical gas to an authorized recipient at the direction of a
 807 hospital or other health care entity;

808 (b) Donated or supplied at a reduced price to a charitable
 809 organization; or

810 (c) Stolen or obtained by fraud or deceit.

811 (10) The failure to obtain a permit or operating without a
 812 valid permit when a permit is required.

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813 (11) The obtaining of or attempt to obtain medical gas by
 814 fraud, deceit, or misrepresentation or engaging in
 815 misrepresentation or fraud in the distribution of medical gas.

816 (12) Except for oxygen USP in emergency situations, the
 817 distribution of medical gas to a patient without an order or
 818 prescription from a licensed practitioner authorized by law to
 819 prescribe.

820 (13) The distribution of medical gas that was previously
 821 dispensed by a pharmacy or a licensed practitioner authorized by
 822 law to prescribe.

823 (14) The distribution of medical gas or medical gas-related
 824 equipment to a patient, unless the patient has been provided
 825 with the appropriate information and counseling on the use,
 826 storage, and disposal of medical gas.

827 (15) The failure to report an act prohibited under this
 828 part and its implementing regulations.

829 (16) The failure to exercise due diligence as provided in
 830 s. 499.88.

831 Section 17. Section 499.92, Florida Statutes, is created to
 832 read:

833 499.92 Criminal acts.—

834 (1) A person commits a felony of the third degree,
 835 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 836 if he or she:

837 (a) With intent to defraud or deceive adulterates or
 838 misbrands medical gas.

839 (b) Engages in the wholesale distribution of, and knowingly
 840 purchases or receives, medical gas from a person not legally
 841 authorized to distribute medical gas.

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842 (c) Engages in the wholesale distribution of, and knowingly
 843 sells, barter, brokers, or transfers, medical gas to a person
 844 not legally authorized to purchase medical gas in the
 845 jurisdiction in which the person receives the medical gas.

846 (d) Knowingly, falsely creates a label for medical gas or
 847 knowingly, falsely represents a factual matter contained in a
 848 label for medical gas.

849 (2) A court that has authority over a person who violates
 850 this section and that convicts such person shall order him or
 851 her to forfeit to the state real or personal property or assets:

852 (a) Used or intended to be used to commit, facilitate, or
 853 promote the commission of such violation; and

854 (b) Constituting, derived from, or traceable to the gross
 855 proceeds that the defendant obtained as a result of the
 856 violation.

857 (3) Property or assets subject to forfeiture under
 858 subsection (2) may be seized pursuant to a warrant obtained in
 859 the same manner as a search warrant or as otherwise authorized
 860 by law and held until the case against the defendant is
 861 adjudicated. Moneys ordered to be forfeited or proceeds from the
 862 sale of assets ordered to be forfeited shall be equitably
 863 divided between the department and agencies involved in the
 864 investigation and prosecution that led to the conviction. Other
 865 property ordered to be forfeited after conviction of a defendant
 866 may, at the discretion of the investigating agencies, be placed
 867 into official use by the department or the agencies involved in
 868 the investigation and prosecution.

869 Section 18. Section 499.93, Florida Statutes, is created to
 870 read:

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871 499.93 Inspections.-

872 (1) The department may require a facility that engages in
 873 the manufacture or wholesale distribution of medical gas to
 874 undergo an inspection in accordance with a schedule to be
 875 determined by the department.

876 (2) The department may recognize other state inspections of
 877 a manufacturer or wholesale distributor in another state if such
 878 state's laws are deemed to be substantially equivalent to the
 879 laws of this state.

880 (3) A manufacturing facility is exempt from inspection by
 881 the department if the facility:

882 (a) Is currently registered with the FDA in accordance with
 883 s. 510 of the federal act and can provide proof of such
 884 registration, such as a copy of the online verification page;
 885 and

886 (b) Can provide proof of inspection within the past 3 years
 887 by the FDA or, if the facility is located in another state, by
 888 another governmental entity charged with regulation of good
 889 manufacturing practices related to medical gas.

890 (4) A wholesale distributor must exhibit or have readily
 891 available its state permits and its most recent inspection
 892 report administered by the department. The department may
 893 authorize a third party to inspect wholesale distributors who
 894 distribute within or into this state.

895 (5) The department shall ensure that information obtained
 896 during the inspection process which is identified by the
 897 establishment being inspected as a trade secret, as defined in
 898 s. 812.081, is maintained by the department and remains
 899 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

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900 of the State Constitution for as long as the information is
 901 retained by the department.

902 Section 19. Section 499.94, Florida Statutes, is created to
 903 read:

904 499.94 Fees.-A fee collected for a permit under this part
 905 shall be deposited into the Professional Regulation Trust Fund.
 906 Moneys collected under this part shall be used for administering
 907 this part. The department shall maintain a separate account in
 908 the trust fund for the Drugs, Devices, and Cosmetics program.

909 Section 20. Section 499.95, Florida Statutes, is created to
 910 read:

911 499.95 Enforcement and construction of this part.-

912 (1) For the purpose of initiating an investigation or
 913 proceeding under this part, the department may administer oaths,
 914 take depositions, issue and serve subpoenas, and compel the
 915 attendance of witnesses and the production of books, papers,
 916 documents, or other evidence. Challenges to, and enforcement of,
 917 a subpoena and an order shall be conducted in accordance with s.
 918 120.569.

919 (2) A state, county, or municipal attorney to whom the
 920 department or its designated agent reports a violation of this
 921 part shall timely institute proceedings in the court of
 922 competent jurisdiction and shall prosecute in the manner
 923 required by law.

924 (3) The department is not required to report minor
 925 violations to a state, county, or municipal attorney if the
 926 department determines that the public interest is best served by
 927 issuance of a written notice or warning to the violator.

928 (4) This part is cumulative and does not repeal or affect

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929 the power, duty, or authority of the department. However,
 930 relating to the regulation of medical gas, if this part
 931 conflicts with other law, this part controls.

932 Section 21. Section 499.001, Florida Statutes, is amended
 933 to read:

934 499.001 Florida Drug and Cosmetic Act; short title.-
 935 Sections 499.001-499.95 ~~499.001-499.081~~ may be cited as the
 936 "Florida Drug and Cosmetic Act."

937 Section 22. Present subsections (11) through (32) and (46)
 938 through (55) of section 499.003, Florida Statutes, are amended,
 939 and a new subsection (32) is added to that section, to read:

940 499.003 Definitions of terms used in this part.-As used in
 941 this part, the term:

942 ~~(11) "Compressed medical gas" means any liquefied or~~
 943 ~~vaporized gas that is a prescription drug, whether it is alone~~
 944 ~~or in combination with other gases.~~

945 (11)-(12) "Contraband prescription drug" means any
 946 adulterated drug, ~~as defined in s. 499.006,~~ any counterfeit
 947 drug, ~~as defined in this section,~~ and also means any
 948 prescription drug for which a pedigree paper does not exist, or
 949 for which the pedigree paper in existence has been forged,
 950 counterfeited, falsely created, or contains any altered, false,
 951 or misrepresented matter.

952 (12)-(13) "Cosmetic" means an article, with the exception of
 953 soap, that is:

954 (a) Intended to be rubbed, poured, sprinkled, or sprayed
 955 on; introduced into; or otherwise applied to the human body or
 956 any part thereof for cleansing, beautifying, promoting
 957 attractiveness, or altering the appearance; or

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958 (b) Intended for use as a component of any such article.

959 (13)-(14) "Counterfeit drug," "counterfeit device," or
 960 "counterfeit cosmetic" means a drug, device, or cosmetic which,
 961 or the container, seal, or labeling of which, without
 962 authorization, bears the trademark, trade name, or other
 963 identifying mark, imprint, or device, or any likeness thereof,
 964 of a drug, device, or cosmetic manufacturer, processor, packer,
 965 or distributor other than the person that in fact manufactured,
 966 processed, packed, or distributed that drug, device, or cosmetic
 967 and which thereby falsely purports or is represented to be the
 968 product of, or to have been packed or distributed by, that other
 969 drug, device, or cosmetic manufacturer, processor, packer, or
 970 distributor.

971 (14)-(15) "Department" means the Department of Business and
 972 Professional Regulation.

973 (15)-(16) "Device" means any instrument, apparatus,
 974 implement, machine, contrivance, implant, in vitro reagent, or
 975 other similar or related article, including its components,
 976 parts, or accessories, which is:

977 (a) Recognized in the current edition of the United States
 978 Pharmacopoeia and National Formulary, or any supplement
 979 thereof;~~;~~

980 (b) Intended for use in the diagnosis, cure, mitigation,
 981 treatment, therapy, or prevention of disease in humans or other
 982 animals;~~;~~ or

983 (c) Intended to affect the structure or any function of the
 984 body of humans or other animals,

985
 986 and that does not achieve any of its principal intended purposes

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987 through chemical action within or on the body of humans or other
 988 animals and which is not dependent upon being metabolized for
 989 the achievement of any of its principal intended purposes.
 990 (16)~~(17)~~ "Distribute" or "distribution" means to sell;
 991 offer to sell; give away; transfer, whether by passage of title,
 992 physical movement, or both; deliver; or offer to deliver. The
 993 term does not mean to administer or dispense and does not
 994 include the billing and invoicing activities that commonly
 995 follow a wholesale distribution transaction.
 996 (17)~~(18)~~ "Drop shipment" means the sale of a prescription
 997 drug from a manufacturer to a wholesale distributor, where the
 998 wholesale distributor takes title to, but not possession of, the
 999 prescription drug, and the manufacturer of the prescription drug
 1000 ships the prescription drug directly to a chain pharmacy
 1001 warehouse or a person authorized by law to purchase prescription
 1002 drugs for the purpose of administering or dispensing the drug,
 1003 as defined in s. 465.003.
 1004 (18)~~(19)~~ "Drug" means an article that is:
 1005 (a) Recognized in the current edition of the United States
 1006 Pharmacopoeia and National Formulary, official Homeopathic
 1007 Pharmacopoeia of the United States, or any supplement to any of
 1008 those publications;
 1009 (b) Intended for use in the diagnosis, cure, mitigation,
 1010 treatment, therapy, or prevention of disease in humans or other
 1011 animals;
 1012 (c) Intended to affect the structure or any function of the
 1013 body of humans or other animals; or
 1014 (d) Intended for use as a component of any article
 1015 specified in paragraph (a), paragraph (b), or paragraph (c), and

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1016 includes active pharmaceutical ingredients, but does not include
 1017 devices or their nondrug components, parts, or accessories. For
 1018 purposes of this paragraph, an "active pharmaceutical
 1019 ingredient" includes any substance or mixture of substances
 1020 intended, represented, or labeled for use in drug manufacturing
 1021 that furnishes or is intended to furnish, in a finished dosage
 1022 form, any pharmacological activity or other direct effect in the
 1023 diagnosis, cure, mitigation, treatment, therapy, or prevention
 1024 of disease in humans or other animals, or to affect the
 1025 structure or any function of the body of humans or other
 1026 animals.
 1027 (19)~~(20)~~ "Establishment" means a place of business which is
 1028 at one general physical location and may extend to one or more
 1029 contiguous suites, units, floors, or buildings operated and
 1030 controlled exclusively by entities under common operation and
 1031 control. Where multiple buildings are under common exclusive
 1032 ownership, operation, and control, an intervening thoroughfare
 1033 does not affect the contiguous nature of the buildings. For
 1034 purposes of permitting, each suite, unit, floor, or building
 1035 must be identified in the most recent permit application.
 1036 (20)~~(21)~~ "Federal act" means the Federal Food, Drug, and
 1037 Cosmetic Act, 21 U.S.C. ss. 301 et seq.; 52 Stat. 1040 et seq.
 1038 (21)~~(22)~~ "Freight forwarder" means a person who receives
 1039 prescription drugs which are owned by another person and
 1040 designated by that person for export, and exports those
 1041 prescription drugs.
 1042 (22)~~(23)~~ "Health care entity" means a closed pharmacy or
 1043 any person, organization, or business entity that provides
 1044 diagnostic, medical, surgical, or dental treatment or care, or

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1045 chronic or rehabilitative care, but does not include any
 1046 wholesale distributor or retail pharmacy licensed under state
 1047 law to deal in prescription drugs. However, a blood
 1048 establishment is a health care entity that may engage in the
 1049 wholesale distribution of prescription drugs under s.
 1050 499.01(2)(g)1.c.

1051 (23)~~(24)~~ "Health care facility" means a health care
 1052 facility licensed under chapter 395.

1053 (24)~~(25)~~ "Hospice" means a corporation licensed under part
 1054 IV of chapter 400.

1055 (25)~~(26)~~ "Hospital" means a facility as defined in s.
 1056 395.002 and licensed under chapter 395.

1057 (26)~~(27)~~ "Immediate container" does not include package
 1058 liners.

1059 (27)~~(28)~~ "Label" means a display of written, printed, or
 1060 graphic matter upon the immediate container of any drug, device,
 1061 or cosmetic. A requirement made by or under authority of this
 1062 part or rules adopted under this part that any word, statement,
 1063 or other information appear on the label is not complied with
 1064 unless such word, statement, or other information also appears
 1065 on the outside container or wrapper, if any, of the retail
 1066 package of such drug, device, or cosmetic or is easily legible
 1067 through the outside container or wrapper.

1068 (28)~~(29)~~ "Labeling" means all labels and other written,
 1069 printed, or graphic matters:

1070 (a) Upon a drug, device, or cosmetic, or any of its
 1071 containers or wrappers; or

1072 (b) Accompanying or related to such drug, device, or
 1073 cosmetic.

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1074 (29)~~(30)~~ "Manufacture" means the preparation, deriving,
 1075 compounding, propagation, processing, producing, or fabrication
 1076 of any drug, device, or cosmetic.

1077 (30)~~(31)~~ "Manufacturer" means:

1078 (a) A person who prepares, derives, manufactures, or
 1079 produces a drug, device, or cosmetic;

1080 (b) The holder or holders of a New Drug Application (NDA),
 1081 an Abbreviated New Drug Application (ANDA), a Biologics License
 1082 Application (BLA), or a New Animal Drug Application (NADA),
 1083 provided such application has become effective or is otherwise
 1084 approved consistent with s. 499.023;

1085 (c) A private label distributor for whom the private label
 1086 distributor's prescription drugs are originally manufactured and
 1087 labeled for the distributor and have not been repackaged;

1088 (d) A person registered under the federal act as a
 1089 manufacturer of a prescription drug, who is described in
 1090 paragraph (a), paragraph (b), or paragraph (c), who has entered
 1091 into a written agreement with another prescription drug
 1092 manufacturer that authorizes either manufacturer to distribute
 1093 the prescription drug identified in the agreement as the
 1094 manufacturer of that drug consistent with the federal act and
 1095 its implementing regulations;

1096 (e) A member of an affiliated group that includes, but is
 1097 not limited to, persons described in paragraph (a), paragraph
 1098 (b), paragraph (c), or paragraph (d), which member distributes
 1099 prescription drugs, whether or not obtaining title to the drugs,
 1100 only for the manufacturer of the drugs who is also a member of
 1101 the affiliated group. As used in this paragraph, the term
 1102 "affiliated group" means an affiliated group as defined in s.

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1103 1504 of the Internal Revenue Code of 1986, as amended. The
 1104 manufacturer must disclose the names of all of its affiliated
 1105 group members to the department; or

1106 (f) A person permitted as a third party logistics provider,
 1107 only while providing warehousing, distribution, or other
 1108 logistics services on behalf of a person described in paragraph
 1109 (a), paragraph (b), paragraph (c), paragraph (d), or paragraph
 1110 (e).

1111

1112 The term does not include a pharmacy that is operating in
 1113 compliance with pharmacy practice standards as defined in
 1114 chapter 465 and rules adopted under that chapter.

1115 (31)~~(32)~~ "Medical convenience kit" means packages or units
 1116 that contain combination products as defined in 21 C.F.R. s.
 1117 3.2(e)(2).

1118 (32) "Medical gas" is defined in accordance with the
 1119 federal act and means a liquefied or vaporized gas that is a
 1120 prescription drug, regardless of whether it is alone or combined
 1121 with other gases.

1122 ~~(46) "Prescription medical oxygen" means oxygen USP which~~
 1123 ~~is a drug that can only be sold on the order or prescription of~~
 1124 ~~a practitioner authorized by law to prescribe. The label of~~
 1125 ~~prescription medical oxygen must comply with current labeling~~
 1126 ~~requirements for oxygen under the Federal Food, Drug, and~~
 1127 ~~Cosmetic Act.~~

1128 ~~(47)~~ "Primary wholesale distributor" means any wholesale
 1129 distributor that:

1130 (a) Purchased 90 percent or more of the total dollar volume
 1131 of its purchases of prescription drugs directly from

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1132 manufacturers in the previous year; and

1133 (b)1. Directly purchased prescription drugs from not fewer
 1134 than 50 different prescription drug manufacturers in the
 1135 previous year; or

1136 2. Has, or the affiliated group, as defined in s. 1504 of
 1137 the Internal Revenue Code, of which the wholesale distributor is
 1138 a member has, not fewer than 250 employees.

1139 (c) For purposes of this subsection, "directly from
 1140 manufacturers" means:

1141 1. Purchases made by the wholesale distributor directly
 1142 from the manufacturer of prescription drugs; and

1143 2. Transfers from a member of an affiliated group, as
 1144 defined in s. 1504 of the Internal Revenue Code, of which the
 1145 wholesale distributor is a member, if:

1146 a. The affiliated group purchases 90 percent or more of the
 1147 total dollar volume of its purchases of prescription drugs from
 1148 the manufacturer in the previous year; and

1149 b. The wholesale distributor discloses to the department
 1150 the names of all members of the affiliated group of which the
 1151 wholesale distributor is a member and the affiliated group
 1152 agrees in writing to provide records on prescription drug
 1153 purchases by the members of the affiliated group not later than
 1154 48 hours after the department requests access to such records,
 1155 regardless of the location where the records are stored.

1156 (47)~~(48)~~ "Proprietary drug," or "OTC drug," means a patent
 1157 or over-the-counter drug in its unbroken, original package,
 1158 which drug is sold to the public by, or under the authority of,
 1159 the manufacturer or primary distributor thereof, is not
 1160 misbranded under the provisions of this part, and can be

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1161 purchased without a prescription.

1162 (48)~~(49)~~ "Repackage" includes repacking or otherwise
1163 changing the container, wrapper, or labeling to further the
1164 distribution of the drug, device, or cosmetic.

1165 (49)~~(50)~~ "Repackager" means a person who repackages. The
1166 term excludes pharmacies that are operating in compliance with
1167 pharmacy practice standards as defined in chapter 465 and rules
1168 adopted under that chapter.

1169 (50)~~(51)~~ "Retail pharmacy" means a community pharmacy
1170 licensed under chapter 465 that purchases prescription drugs at
1171 fair market prices and provides prescription services to the
1172 public.

1173 (51)~~(52)~~ "Secondary wholesale distributor" means a
1174 wholesale distributor that is not a primary wholesale
1175 distributor.

1176 (52)~~(53)~~ "Veterinary prescription drug" means a
1177 prescription drug intended solely for veterinary use. The label
1178 of the drug must bear the statement, "Caution: Federal law
1179 restricts this drug to sale by or on the order of a licensed
1180 veterinarian."

1181 (53)~~(54)~~ "Wholesale distribution" means distribution of
1182 prescription drugs to persons other than a consumer or patient,
1183 but does not include:

1184 (a) Any of the following activities, which is not a
1185 violation of s. 499.005(21) if such activity is conducted in
1186 accordance with s. 499.01(2)(g):

1187 1. The purchase or other acquisition by a hospital or other
1188 health care entity that is a member of a group purchasing
1189 organization of a prescription drug for its own use from the

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1190 group purchasing organization or from other hospitals or health
1191 care entities that are members of that organization.

1192 2. The sale, purchase, or trade of a prescription drug or
1193 an offer to sell, purchase, or trade a prescription drug by a
1194 charitable organization described in s. 501(c)(3) of the
1195 Internal Revenue Code of 1986, as amended and revised, to a
1196 nonprofit affiliate of the organization to the extent otherwise
1197 permitted by law.

1198 3. The sale, purchase, or trade of a prescription drug or
1199 an offer to sell, purchase, or trade a prescription drug among
1200 hospitals or other health care entities that are under common
1201 control. For purposes of this subparagraph, "common control"
1202 means the power to direct or cause the direction of the
1203 management and policies of a person or an organization, whether
1204 by ownership of stock, by voting rights, by contract, or
1205 otherwise.

1206 4. The sale, purchase, trade, or other transfer of a
1207 prescription drug from or for any federal, state, or local
1208 government agency or any entity eligible to purchase
1209 prescription drugs at public health services prices pursuant to
1210 Pub. L. No. 102-585, s. 602 to a contract provider or its
1211 subcontractor for eligible patients of the agency or entity
1212 under the following conditions:

1213 a. The agency or entity must obtain written authorization
1214 for the sale, purchase, trade, or other transfer of a
1215 prescription drug under this subparagraph from the Secretary of
1216 Business and Professional Regulation or his or her designee.

1217 b. The contract provider or subcontractor must be
1218 authorized by law to administer or dispense prescription drugs.

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1219 c. In the case of a subcontractor, the agency or entity
 1220 must be a party to and execute the subcontract.

1221 d. The contract provider and subcontractor must maintain
 1222 and produce immediately for inspection all records of movement
 1223 or transfer of all the prescription drugs belonging to the
 1224 agency or entity, including, but not limited to, the records of
 1225 receipt and disposition of prescription drugs. Each contractor
 1226 and subcontractor dispensing or administering these drugs must
 1227 maintain and produce records documenting the dispensing or
 1228 administration. Records that are required to be maintained
 1229 include, but are not limited to, a perpetual inventory itemizing
 1230 drugs received and drugs dispensed by prescription number or
 1231 administered by patient identifier, which must be submitted to
 1232 the agency or entity quarterly.

1233 e. The contract provider or subcontractor may administer or
 1234 dispense the prescription drugs only to the eligible patients of
 1235 the agency or entity or must return the prescription drugs for
 1236 or to the agency or entity. The contract provider or
 1237 subcontractor must require proof from each person seeking to
 1238 fill a prescription or obtain treatment that the person is an
 1239 eligible patient of the agency or entity and must, at a minimum,
 1240 maintain a copy of this proof as part of the records of the
 1241 contractor or subcontractor required under sub-subparagraph d.

1242 f. In addition to the departmental inspection authority
 1243 described ~~set forth~~ in s. 499.051, the establishment of the
 1244 contract provider and subcontractor and all records pertaining
 1245 to prescription drugs subject to this subparagraph shall be
 1246 subject to inspection by the agency or entity. All records
 1247 relating to prescription drugs of a manufacturer under this

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1248 subparagraph shall be subject to audit by the manufacturer of
 1249 those drugs, without identifying individual patient information.

1250 (b) Any of the following activities, which is not a
 1251 violation of s. 499.005(21) if such activity is conducted in
 1252 accordance with rules established by the department:

1253 1. The sale, purchase, or trade of a prescription drug
 1254 among federal, state, or local government health care entities
 1255 that are under common control and are authorized to purchase
 1256 such prescription drug.

1257 2. The sale, purchase, or trade of a prescription drug or
 1258 an offer to sell, purchase, or trade a prescription drug for
 1259 emergency medical reasons. For purposes of this subparagraph,
 1260 the term "emergency medical reasons" includes transfers of
 1261 prescription drugs by a retail pharmacy to another retail
 1262 pharmacy to alleviate a temporary shortage.

1263 3. The transfer of a prescription drug acquired by a
 1264 medical director on behalf of a licensed emergency medical
 1265 services provider to that emergency medical services provider
 1266 and its transport vehicles for use in accordance with the
 1267 provider's license under chapter 401.

1268 4. The revocation of a sale or the return of a prescription
 1269 drug to the person's prescription drug wholesale supplier.

1270 5. The donation of a prescription drug by a health care
 1271 entity to a charitable organization that has been granted an
 1272 exemption under s. 501(c)(3) of the Internal Revenue Code of
 1273 1986, as amended, and that is authorized to possess prescription
 1274 drugs.

1275 6. The transfer of a prescription drug by a person
 1276 authorized to purchase or receive prescription drugs to a person

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1277 licensed or permitted to handle reverse distributions or
 1278 destruction under the laws of the jurisdiction in which the
 1279 person handling the reverse distribution or destruction receives
 1280 the drug.

1281 7. The transfer of a prescription drug by a hospital or
 1282 other health care entity to a person licensed under this part to
 1283 repackage prescription drugs for the purpose of repackaging the
 1284 prescription drug for use by that hospital, or other health care
 1285 entity and other health care entities that are under common
 1286 control, if ownership of the prescription drugs remains with the
 1287 hospital or other health care entity at all times. In addition
 1288 to the recordkeeping requirements of s. 499.0121(6), the
 1289 hospital or health care entity that transfers prescription drugs
 1290 pursuant to this subparagraph must reconcile all drugs
 1291 transferred and returned and resolve any discrepancies in a
 1292 timely manner.

1293 (c) The distribution of prescription drug samples by
 1294 manufacturers' representatives or distributors' representatives
 1295 conducted in accordance with s. 499.028.

1296 (d) The sale, purchase, or trade of blood and blood
 1297 components intended for transfusion. As used in this paragraph,
 1298 the term "blood" means whole blood collected from a single donor
 1299 and processed for transfusion or further manufacturing, and the
 1300 term "blood components" means that part of the blood separated
 1301 by physical or mechanical means.

1302 (e) The lawful dispensing of a prescription drug in
 1303 accordance with chapter 465.

1304 (f) The sale, purchase, or trade of a prescription drug
 1305 between pharmacies as a result of a sale, transfer, merger, or

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1306 consolidation of all or part of the business of the pharmacies
 1307 from or with another pharmacy, whether accomplished as a
 1308 purchase and sale of stock or of business assets.

1309 ~~(54)-(55)~~ "Wholesale distributor" means any person engaged
 1310 in wholesale distribution of prescription drugs in or into this
 1311 state, including, but not limited to, manufacturers;
 1312 repackagers; own-label distributors; jobbers; private-label
 1313 distributors; brokers; warehouses, including manufacturers' and
 1314 distributors' warehouses, chain drug warehouses, and wholesale
 1315 drug warehouses; independent wholesale drug traders; exporters;
 1316 retail pharmacies; and the agents thereof that conduct wholesale
 1317 distributions.

1318 Section 23. Paragraph (a) of subsection (1) of section
 1319 409.9201, Florida Statutes, is amended to read:

1320 409.9201 Medicaid fraud.—

1321 (1) As used in this section, the term:

1322 (a) "Prescription drug" means any drug, including, but not
 1323 limited to, finished dosage forms or active ingredients that are
 1324 subject to, defined in ~~by~~, or described in ~~by~~ s. 503(b) of the
 1325 Federal Food, Drug, and Cosmetic Act or in ~~by~~ s. 465.003(8), s.
 1326 499.003(52), ~~s. 499.003(46) or (53)~~ or s. 499.007(13).

1327
 1328 The value of individual items of the legend drugs or goods or
 1329 services involved in distinct transactions committed during a
 1330 single scheme or course of conduct, whether involving a single
 1331 person or several persons, may be aggregated when determining
 1332 the punishment for the offense.

1333 Section 24. Paragraph (c) of subsection (9) of section
 1334 460.403, Florida Statutes, is amended to read:

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1335 460.403 Definitions.—As used in this chapter, the term:
 1336 (9)
 1337 (c)1. Chiropractic physicians may adjust, manipulate, or
 1338 treat the human body by manual, mechanical, electrical, or
 1339 natural methods; by the use of physical means or physiotherapy,
 1340 including light, heat, water, or exercise; by the use of
 1341 acupuncture; or by the administration of foods, food
 1342 concentrates, food extracts, and items for which a prescription
 1343 is not required and may apply first aid and hygiene, but
 1344 chiropractic physicians are expressly prohibited from
 1345 prescribing or administering to any person any legend drug
 1346 except as authorized under subparagraph 2., from performing any
 1347 surgery except as stated herein, or from practicing obstetrics.
 1348 2. Notwithstanding the prohibition against prescribing and
 1349 administering legend drugs under subparagraph 1. or s.
 1350 499.82(7)(c) s. 499.01(2)(m), pursuant to board rule
 1351 chiropractic physicians may order, store, and administer, for
 1352 emergency purposes only at the chiropractic physician's office
 1353 or place of business, prescription medical oxygen and may also
 1354 order, store, and administer the following topical anesthetics
 1355 in aerosol form:
 1356 a. Any solution consisting of 25 percent ethylchloride and
 1357 75 percent dichlorodifluoromethane.
 1358 b. Any solution consisting of 15 percent
 1359 dichlorodifluoromethane and 85 percent
 1360 trichloromonofluoromethane.
 1361
 1362 However, this paragraph does not authorize a chiropractic
 1363 physician to prescribe medical oxygen as defined in chapter 499.

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1364 Section 25. Subsection (3) of section 465.0265, Florida
 1365 Statutes, is amended to read:
 1366 465.0265 Centralized prescription filling.—
 1367 (3) The filling, delivery, and return of a prescription by
 1368 one pharmacy for another pursuant to this section ~~may shall~~ not
 1369 be construed as the filling of a transferred prescription as
 1370 described set forth in s. 465.026 or as a wholesale distribution
 1371 as defined set forth in s. 499.003 s. 499.003(54).
 1372 Section 26. Subsection (1), paragraphs (a), (c), (g), (m),
 1373 (n), and (o) of subsection (2), and subsection (5) of section
 1374 499.01, Florida Statutes, are amended to read:
 1375 499.01 Permits.—
 1376 (1) ~~Before~~ Prior to operating, a permit is required for
 1377 each person and establishment that intends to operate as:
 1378 (a) A prescription drug manufacturer;
 1379 (b) A prescription drug repackager;
 1380 (c) A nonresident prescription drug manufacturer;
 1381 (d) A prescription drug wholesale distributor;
 1382 (e) An out-of-state prescription drug wholesale
 1383 distributor;
 1384 (f) A retail pharmacy drug wholesale distributor;
 1385 (g) A restricted prescription drug distributor;
 1386 (h) A complimentary drug distributor;
 1387 (i) A freight forwarder;
 1388 (j) A veterinary prescription drug retail establishment;
 1389 (k) A veterinary prescription drug wholesale distributor;
 1390 (l) A limited prescription drug veterinary wholesale
 1391 distributor;
 1392 ~~(m) A medical oxygen retail establishment;~~

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1393 ~~(n) A compressed medical gas wholesale distributor;~~
 1394 ~~(e) A compressed medical gas manufacturer;~~
 1395 ~~(m) (p)~~ An over-the-counter drug manufacturer;
 1396 ~~(n) (q)~~ A device manufacturer;
 1397 ~~(o) (r)~~ A cosmetic manufacturer;
 1398 ~~(p) (s)~~ A third party logistics provider; or
 1399 ~~(q) (t)~~ A health care clinic establishment.
 1400 (2) The following permits are established:
 1401 (a) *Prescription drug manufacturer permit.*—A prescription
 1402 drug manufacturer permit is required for any person that is a
 1403 manufacturer of a prescription drug and that manufactures or
 1404 distributes such prescription drugs in this state.
 1405 1. A person that operates an establishment permitted as a
 1406 prescription drug manufacturer may engage in wholesale
 1407 distribution of prescription drugs manufactured at that
 1408 establishment and must comply with all of the provisions of this
 1409 part, except s. 499.01212, and the rules adopted under this
 1410 part, except s. 499.01212, which apply to a wholesale
 1411 distributor.
 1412 2. A prescription drug manufacturer must comply with all
 1413 appropriate state and federal good manufacturing practices.
 1414 3. A blood establishment, as defined in s. 381.06014,
 1415 operating in a manner consistent with the provisions of 21
 1416 C.F.R. parts 211 and 600-640, and manufacturing only the
 1417 prescription drugs described in s. 499.003(53)(d) ~~s.~~
 1418 ~~499.003(54)(d)~~ is not required to be permitted as a prescription
 1419 drug manufacturer under this paragraph or to register products
 1420 under s. 499.015.
 1421 (c) *Nonresident prescription drug manufacturer permit.*—A

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1422 nonresident prescription drug manufacturer permit is required
 1423 for any person that is a manufacturer of prescription drugs,
 1424 unless permitted as a third party logistics provider, located
 1425 outside of this state or outside the United States and that
 1426 engages in the wholesale distribution in this state of such
 1427 prescription drugs. Each such manufacturer must be permitted by
 1428 the department and comply with all of the provisions required of
 1429 a wholesale distributor under this part, except s. 499.01212.
 1430 1. A person that distributes prescription drugs for which
 1431 the person is not the manufacturer must also obtain an out-of-
 1432 state prescription drug wholesale distributor permit or third
 1433 party logistics provider permit pursuant to this section to
 1434 engage in the wholesale distribution of such prescription drugs.
 1435 This subparagraph does not apply to a manufacturer as defined in
 1436 s. 499.003(30)(e) ~~s. 499.003(31)(e)~~.
 1437 2. Any such person must comply with the licensing or
 1438 permitting requirements of the jurisdiction in which the
 1439 establishment is located and the federal act, and any product
 1440 wholesaled into this state must comply with this part. If a
 1441 person intends to import prescription drugs from a foreign
 1442 country into this state, the nonresident prescription drug
 1443 manufacturer must provide to the department a list identifying
 1444 each prescription drug it intends to import and document
 1445 approval by the United States Food and Drug Administration for
 1446 such importation.
 1447 (g) *Restricted prescription drug distributor permit.*—
 1448 1. A restricted prescription drug distributor permit is
 1449 required for:
 1450 a. Any person located in this state who engages in the

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1451 distribution of a prescription drug, which distribution is not
 1452 considered "wholesale distribution" under s. 499.003(53)(a) ~~s.~~
 1453 ~~499.003(54)(a)~~.

1454 b. Any person located in this state who engages in the
 1455 receipt or distribution of a prescription drug in this state for
 1456 the purpose of processing its return or its destruction if such
 1457 person is not the person initiating the return, the prescription
 1458 drug wholesale supplier of the person initiating the return, or
 1459 the manufacturer of the drug.

1460 c. A blood establishment located in this state which
 1461 collects blood and blood components only from volunteer donors
 1462 as defined in s. 381.06014 or pursuant to an authorized
 1463 practitioner's order for medical treatment or therapy and
 1464 engages in the wholesale distribution of a prescription drug not
 1465 described in s. 499.003(53)(d) ~~s. 499.003(54)(d)~~ to a health
 1466 care entity. A mobile blood unit operated by a blood
 1467 establishment permitted under this sub-subparagraph is not
 1468 required to be separately permitted. The health care entity
 1469 receiving a prescription drug distributed under this sub-
 1470 subparagraph must be licensed as a closed pharmacy or provide
 1471 health care services at that establishment. The blood
 1472 establishment must operate in accordance with s. 381.06014 and
 1473 may distribute only:

1474 (I) Prescription drugs indicated for a bleeding or clotting
 1475 disorder or anemia;

1476 (II) Blood-collection containers approved under s. 505 of
 1477 the federal act;

1478 (III) Drugs that are blood derivatives, or a recombinant or
 1479 synthetic form of a blood derivative;

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1480 (IV) Prescription drugs that are identified in rules
 1481 adopted by the department and that are essential to services
 1482 performed or provided by blood establishments and authorized for
 1483 distribution by blood establishments under federal law; or

1484 (V) To the extent authorized by federal law, drugs
 1485 necessary to collect blood or blood components from volunteer
 1486 blood donors; for blood establishment personnel to perform
 1487 therapeutic procedures under the direction and supervision of a
 1488 licensed physician; and to diagnose, treat, manage, and prevent
 1489 any reaction of a volunteer blood donor or a patient undergoing
 1490 a therapeutic procedure performed under the direction and
 1491 supervision of a licensed physician,

1492

1493 as long as all of the health care services provided by the blood
 1494 establishment are related to its activities as a registered
 1495 blood establishment or the health care services consist of
 1496 collecting, processing, storing, or administering human
 1497 hematopoietic stem cells or progenitor cells or performing
 1498 diagnostic testing of specimens if such specimens are tested
 1499 together with specimens undergoing routine donor testing. The
 1500 blood establishment may purchase and possess the drugs described
 1501 in this sub-subparagraph without a health care clinic
 1502 establishment permit.

1503 2. Storage, handling, and recordkeeping of these
 1504 distributions by a person required to be permitted as a
 1505 restricted prescription drug distributor must be in accordance
 1506 with the requirements for wholesale distributors under s.
 1507 499.0121, but not those described ~~set forth~~ in s. 499.01212 if
 1508 the distribution occurs pursuant to sub-subparagraph 1.a. or

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1509 sub-subparagraph 1.b.

1510 3. A person who applies for a permit as a restricted
1511 prescription drug distributor, or for the renewal of such a
1512 permit, must provide to the department the information required
1513 under s. 499.012.

1514 4. The department may adopt rules regarding the
1515 distribution of prescription drugs by hospitals, health care
1516 entities, charitable organizations, other persons not involved
1517 in wholesale distribution, and blood establishments, which rules
1518 are necessary for the protection of the public health, safety,
1519 and welfare.

1520 ~~(m) Medical oxygen retail establishment permit. A medical
1521 oxygen retail establishment permit is required for any person
1522 that sells medical oxygen to patients only. The sale must be
1523 based on an order from a practitioner authorized by law to
1524 prescribe. The term does not include a pharmacy licensed under
1525 chapter 465.~~

1526 1. A medical oxygen retail establishment may not possess,
1527 purchase, sell, or trade any prescription drug other than
1528 medical oxygen.

1529 2. A medical oxygen retail establishment may refill medical
1530 oxygen for an individual patient based on an order from a
1531 practitioner authorized by law to prescribe. A medical oxygen
1532 retail establishment that refills medical oxygen must comply
1533 with all appropriate state and federal good manufacturing
1534 practices.

1535 3. A medical oxygen retail establishment must comply with
1536 all of the wholesale distribution requirements of s. 499.0121.

1537 4. Prescription medical oxygen sold by a medical oxygen

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1538 ~~retail establishment pursuant to a practitioner's order may not
1539 be returned into the retail establishment's inventory.~~

1540 ~~(n) Compressed medical gas wholesale distributor permit. A
1541 compressed medical gas wholesale distributor is a wholesale
1542 distributor that is limited to the wholesale distribution of
1543 compressed medical gases to other than the consumer or patient.
1544 The compressed medical gas must be in the original sealed
1545 container that was purchased by that wholesale distributor. A
1546 compressed medical gas wholesale distributor may not possess or
1547 engage in the wholesale distribution of any prescription drug
1548 other than compressed medical gases. The department shall adopt
1549 rules that govern the wholesale distribution of prescription
1550 medical oxygen for emergency use. With respect to the emergency
1551 use of prescription medical oxygen, those rules may not be
1552 inconsistent with rules and regulations of federal agencies
1553 unless the Legislature specifically directs otherwise.~~

1554 ~~(e) Compressed medical gas manufacturer permit. A
1555 compressed medical gas manufacturer permit is required for any
1556 person that engages in the manufacture of compressed medical
1557 gases or repackages compressed medical gases from one container
1558 to another.~~

1559 1. A compressed medical gas manufacturer may not
1560 manufacture or possess any prescription drug other than
1561 compressed medical gases.

1562 2. A compressed medical gas manufacturer may engage in
1563 wholesale distribution of compressed medical gases manufactured
1564 at that establishment and must comply with all the provisions of
1565 this part and the rules adopted under this part that apply to a
1566 wholesale distributor.

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1567 ~~3. A compressed medical gas manufacturer must comply with~~
 1568 ~~all appropriate state and federal good manufacturing practices.~~

1569 (5) A prescription drug repackager permit issued under this
 1570 part is not required for a restricted prescription drug
 1571 distributor permitholder that is a health care entity to
 1572 repackage prescription drugs in this state for its own use or
 1573 for distribution to hospitals or other health care entities in
 1574 the state for their own use, pursuant to s. 499.003(53)(a)3. ~~or~~
 1575 ~~499.003(54)(a)3.~~, if:

1576 (a) The prescription drug distributor notifies the
 1577 department, in writing, of its intention to engage in
 1578 repackaging under this exemption, 30 days before engaging in the
 1579 repackaging of prescription drugs at the permitted
 1580 establishment;

1581 (b) The prescription drug distributor is under common
 1582 control with the hospitals or other health care entities to
 1583 which the prescription drug distributor is distributing
 1584 prescription drugs. As used in this paragraph, "common control"
 1585 means the power to direct or cause the direction of the
 1586 management and policies of a person or an organization, whether
 1587 by ownership of stock, voting rights, contract, or otherwise;

1588 (c) The prescription drug distributor repackages the
 1589 prescription drugs in accordance with current state and federal
 1590 good manufacturing practices; and

1591 (d) The prescription drug distributor labels the
 1592 prescription drug it repackages in accordance with state and
 1593 federal laws and rules.

1594
 1595 The prescription drug distributor is exempt from the product

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1596 registration requirements of s. 499.015 with regard to the
 1597 prescription drugs that it repackages and distributes under this
 1598 subsection.

1599 Section 27. Paragraph (b) of subsection (2) of section
 1600 499.0121, Florida Statutes, is amended to read:

1601 499.0121 Storage and handling of prescription drugs;
 1602 recordkeeping.—The department shall adopt rules to implement
 1603 this section as necessary to protect the public health, safety,
 1604 and welfare. Such rules shall include, but not be limited to,
 1605 requirements for the storage and handling of prescription drugs
 1606 and for the establishment and maintenance of prescription drug
 1607 distribution records.

1608 (2) SECURITY.—

1609 (b) An establishment that is used for wholesale drug
 1610 distribution must be equipped with:

1611 1. An alarm system to detect entry after hours; however,
 1612 the department may exempt by rule establishments that only hold
 1613 a permit as prescription drug wholesale distributor-brokers ~~and~~
 1614 ~~establishments that only handle medical oxygen;~~ and

1615 2. A security system that will provide suitable protection
 1616 against theft and diversion. When appropriate, the security
 1617 system must provide protection against theft or diversion that
 1618 is facilitated or hidden by tampering with computers or
 1619 electronic records.

1620 Section 28. Section 499.01211, Florida Statutes, is amended
 1621 to read:

1622 499.01211 Drug Wholesale Distributor Advisory Council.—

1623 (1) There is created the Drug Wholesale Distributor
 1624 Advisory Council within the department. The council shall meet

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1625 at least once each calendar quarter. Staff for the council shall
 1626 be provided by the department. The council shall consist of 12
 1627 ~~14~~ members who shall serve without compensation. The council
 1628 shall elect a chairperson and a vice chairperson annually.

1629 (2) The Secretary of Business and Professional Regulation
 1630 or his or her designee and the Secretary of Health Care
 1631 Administration or her or his designee shall be members of the
 1632 council. The Secretary of Business and Professional Regulation
 1633 shall appoint nine additional members to the council who shall
 1634 be appointed to a term of 4 years each, as follows:

1635 (a) Three different persons each of whom is employed by a
 1636 different prescription drug wholesale distributor licensed under
 1637 this part which operates nationally and is a primary wholesale
 1638 distributor, as defined in s. 499.003 ~~s. 499.003(47)~~.

1639 (b) One person employed by a prescription drug wholesale
 1640 distributor licensed under this part which is a secondary
 1641 wholesale distributor, as defined in s. 499.003 ~~s. 499.003(52)~~.

1642 (c) One person employed by a retail pharmacy chain located
 1643 in this state.

1644 (d) One person who is a member of the Board of Pharmacy and
 1645 is a pharmacist licensed under chapter 465.

1646 (e) One person who is a physician licensed pursuant to
 1647 chapter 458 or chapter 459.

1648 (f) One person who is an employee of a hospital licensed
 1649 pursuant to chapter 395 and is a pharmacist licensed pursuant to
 1650 chapter 465.

1651 (g) One person who is an employee of a pharmaceutical
 1652 manufacturer.

1653 (3) The Compressed Gas Association shall appoint one person

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1654 to the council who is an employee of a permitted medical gas
 1655 wholesale distributor or manufacturer.

1656 ~~(4)(3)~~ The council shall review this part and the rules
 1657 adopted to administer this part annually, provide input to the
 1658 department regarding all proposed rules to administer this part,
 1659 make recommendations to the department to improve the protection
 1660 of the prescription drugs and public health, make
 1661 recommendations to improve coordination with other states'
 1662 regulatory agencies and the federal government concerning the
 1663 wholesale distribution of drugs, and make recommendations to
 1664 minimize the impact of regulation of the wholesale distribution
 1665 industry while ensuring protection of the public health.

1666 Section 29. Paragraph (b) of subsection (2) of section
 1667 499.01212, Florida Statutes, is amended to read:

1668 499.01212 Pedigree paper.—

1669 (2) FORMAT.—A pedigree paper must contain the following
 1670 information:

1671 (b) For all other wholesale distributions of prescription
 1672 drugs:

- 1673 1. The quantity, dosage form, and strength of the
- 1674 prescription drugs.
- 1675 2. The lot numbers of the prescription drugs.
- 1676 3. The name and address of each owner of the prescription
- 1677 drug and his or her signature.
- 1678 4. Shipping information, including the name and address of
- 1679 each person certifying delivery or receipt of the prescription
- 1680 drug.
- 1681 5. An invoice number, a shipping document number, or
- 1682 another number uniquely identifying the transaction.

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1683 6. A certification that the recipient wholesale distributor
1684 has authenticated the pedigree papers.

1685 7. The unique serialization of the prescription drug, if
1686 the manufacturer or repackager has uniquely serialized the
1687 individual prescription drug unit.

1688 8. The name, address, telephone number, and, if available,
1689 e-mail contact information of each wholesale distributor
1690 involved in the chain of the prescription drug's custody.

1691

1692 When an affiliated group member obtains title to a prescription
1693 drug before distributing the prescription drug as the
1694 manufacturer as defined in s. 499.003(30)(e) ~~under s.~~
1695 ~~499.003(31)(e)~~, information regarding the distribution between
1696 those affiliated group members may be omitted from a pedigree
1697 paper required under this paragraph for subsequent distributions
1698 of that prescription drug.

1699 Section 30. Paragraph (a) of subsection (1) and subsection
1700 (3) of section 499.015, Florida Statutes, are amended to read:

1701 499.015 Registration of drugs, devices, and cosmetics;
1702 issuance of certificates of free sale.—

1703 (1)(a) Except for those persons exempted from the
1704 definition of manufacturer in s. 499.003 ~~s. 499.003(31)~~, any
1705 person who manufactures, packages, repackages, labels, or
1706 relabels a drug, device, or cosmetic in this state must register
1707 such drug, device, or cosmetic biennially with the department;
1708 pay a fee in accordance with the fee schedule provided by s.
1709 499.041; and comply with this section. The registrant must list
1710 each separate and distinct drug, device, or cosmetic at the time
1711 of registration.

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1712 (3) Except for those persons exempted from the definition
1713 of manufacturer in s. 499.003 ~~s. 499.003(31)~~, a person may not
1714 sell any product that he or she has failed to register in
1715 conformity with this section. Such failure to register subjects
1716 such drug, device, or cosmetic product to seizure and
1717 condemnation as provided in s. 499.062, and subjects such person
1718 to the penalties and remedies provided in this part.

1719 Section 31. Subsection (3) of section 499.024, Florida
1720 Statutes, is amended to read:

1721 499.024 Drug product classification.—The department shall
1722 adopt rules to classify drug products intended for use by humans
1723 which the United States Food and Drug Administration has not
1724 classified in the federal act or the Code of Federal
1725 Regulations.

1726 (3) Any product that falls under the definition of drug in
1727 s. 499.003 ~~s. 499.003(19)~~ may be classified under the authority
1728 of this section. This section does not subject portable
1729 emergency oxygen inhalators to classification; however, this
1730 section does not exempt any person from ss. 499.01 and 499.015.

1731 Section 32. Paragraph (e) of subsection (1), paragraph (b)
1732 of subsection (2), and paragraph (b) of subsection (3) of
1733 section 499.041, Florida Statutes, are amended to read:

1734 499.041 Schedule of fees for drug, device, and cosmetic
1735 applications and permits, product registrations, and free-sale
1736 certificates.—

1737 (1) The department shall assess applicants requiring a
1738 manufacturing permit an annual fee within the ranges established
1739 in this section for the specific type of manufacturer.

1740 ~~(e) The fee for a compressed medical gas manufacturer~~

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1741 ~~permit may not be less than \$400 or more than \$500 annually.~~

1742 (2) The department shall assess an applicant that is
1743 required to have a wholesaling permit an annual fee within the
1744 ranges established in this section for the specific type of
1745 wholesaling.

1746 ~~(b) The fee for a compressed medical gas wholesale
1747 distributor permit may not be less than \$200 or more than \$300
1748 annually.~~

1749 (3) The department shall assess an applicant that is
1750 required to have a retail establishment permit an annual fee
1751 within the ranges established in this section for the specific
1752 type of retail establishment.

1753 ~~(b) The fee for a medical oxygen retail establishment
1754 permit may not be less than \$200 or more than \$300 annually.~~

1755 Section 33. Paragraphs (i) and (m) of subsection (1) of
1756 section 499.05, Florida Statutes, are amended to read:

1757 499.05 Rules.—

1758 (1) The department shall adopt rules to implement and
1759 enforce this chapter part with respect to:

1760 (i) Additional conditions that qualify as an emergency
1761 medical reason under s. 499.003(53)(b)2. ~~s. 499.003(54)(b)2.~~

1762 (m) The recordkeeping, storage, and handling with respect
1763 to each of the distributions of prescription drugs specified in
1764 s. 499.003(53)(a)-(d) ~~s. 499.003(54)(a)-(d).~~

1765 Section 34. Subsections (1) through (4) of section 499.051,
1766 Florida Statutes, are amended to read:

1767 499.051 Inspections and investigations.—

1768 (1) The agents of the department and of the Department of
1769 Law Enforcement, after they present proper identification, may

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1770 inspect, monitor, and investigate any establishment permitted
1771 pursuant to this chapter part during business hours for the
1772 purpose of enforcing this chapter part, chapters 465, 501, and
1773 893, and the rules of the department that protect the public
1774 health, safety, and welfare.

1775 (2) In addition to the authority set forth in subsection
1776 (1), the department and any duly designated officer or employee
1777 of the department may enter and inspect any other establishment
1778 for the purpose of determining compliance with this part and
1779 rules adopted under this chapter part regarding any drug,
1780 device, or cosmetic product.

1781 (3) Any application for a permit or product registration or
1782 for renewal of such permit or registration made pursuant to this
1783 chapter part and rules adopted under this chapter part
1784 constitutes permission for any entry or inspection of the
1785 premises in order to verify compliance with this chapter part
1786 and rules; to discover, investigate, and determine the existence
1787 of compliance; or to elicit, receive, respond to, and resolve
1788 complaints and violations.

1789 (4) Any application for a permit made pursuant to s.
1790 499.012 or s. 499.821 and rules adopted under those sections
1791 ~~that section~~ constitutes permission for agents of the department
1792 and the Department of Law Enforcement, after presenting proper
1793 identification, to inspect, review, and copy any financial
1794 document or record related to the manufacture, repackaging, or
1795 distribution of a drug as is necessary to verify compliance with
1796 this chapter part and the rules adopted by the department to
1797 administer this chapter part, in order to discover, investigate,
1798 and determine the existence of compliance, or to elicit,

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1799 receive, respond to, and resolve complaints and violations.
 1800 Section 35. Section 499.066, Florida Statutes, is amended
 1801 to read:
 1802 499.066 Penalties; remedies.—In addition to other penalties
 1803 and other enforcement provisions:
 1804 (1) The department may institute such suits or other legal
 1805 proceedings as are required to enforce any provision of this
 1806 chapter part. If it appears that a person has violated any
 1807 provision of this chapter part for which criminal prosecution is
 1808 provided, the department may provide the appropriate state
 1809 attorney or other prosecuting agency having jurisdiction with
 1810 respect to such prosecution with the relevant information in the
 1811 department's possession.
 1812 (2) If any person engaged in any activity covered by this
 1813 chapter part violates any provision of this chapter part, any
 1814 rule adopted under this chapter part, or a cease and desist
 1815 order as provided by this chapter part, the department may
 1816 obtain an injunction in the circuit court of the county in which
 1817 the violation occurred or in which the person resides or has its
 1818 principal place of business, and may apply in that court for
 1819 such temporary and permanent orders as the department considers
 1820 necessary to restrain the person from engaging in any such
 1821 activities until the person complies with this chapter part, the
 1822 rules adopted under this chapter part, and the orders of the
 1823 department authorized by this chapter part or to mandate
 1824 compliance with this chapter part, the rules adopted under this
 1825 chapter part, and any order or permit issued by the department
 1826 under this chapter part.
 1827 (3) The department may impose an administrative fine, not

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1828 to exceed \$5,000 per violation per day, for the violation of any
 1829 provision of this chapter part or rules adopted under this
 1830 chapter part. Each day a violation continues constitutes a
 1831 separate violation, and each separate violation is subject to a
 1832 separate fine. All amounts collected pursuant to this section
 1833 shall be deposited into the Professional Regulation Trust Fund
 1834 and are appropriated for the use of the department in
 1835 administering this chapter part. In determining the amount of
 1836 the fine to be levied for a violation, the department shall
 1837 consider:
 1838 (a) The severity of the violation;
 1839 (b) Any actions taken by the person to correct the
 1840 violation or to remedy complaints; and
 1841 (c) Any previous violations.
 1842 (4) The department shall deposit any rewards, fines, or
 1843 collections that are due the department and which derive from
 1844 joint enforcement activities with other state and federal
 1845 agencies which relate to this chapter part, chapter 893, or the
 1846 federal act, into the Professional Regulation Trust Fund. The
 1847 proceeds of those rewards, fines, and collections are
 1848 appropriated for the use of the department in administering this
 1849 chapter part.
 1850 (5) The department may issue an emergency order immediately
 1851 suspending or revoking a permit if it determines that any
 1852 condition in the establishment presents a danger to the public
 1853 health, safety, and welfare.
 1854 (6) The department may issue an emergency order to
 1855 immediately remove from commerce and public access any drug,
 1856 device, or cosmetic, if the department determines that the drug,

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1857 device, or cosmetic presents a clear and present danger to the
1858 public health, safety, and welfare.

1859 (7) Resignation or termination of an affiliated party does
1860 not affect the department's jurisdiction or discretion to
1861 proceed with action to suspend or revoke a permit or to impose
1862 other penalties or enforcement actions authorized by law.

1863 Section 36. Paragraph (a) of subsection (1) and paragraph
1864 (a) of subsection (2) of section 499.0661, Florida Statutes, are
1865 amended to read:

1866 499.0661 Cease and desist orders; removal of certain
1867 persons.—

1868 (1) CEASE AND DESIST ORDERS.—

1869 (a) In addition to any authority otherwise provided in this
1870 chapter, the department may issue and serve a complaint stating
1871 charges upon any permittee or upon any affiliated party,
1872 whenever the department has reasonable cause to believe that the
1873 person or individual named therein is engaging in or has engaged
1874 in conduct that is:

1875 1. An act that demonstrates a lack of fitness or
1876 trustworthiness to engage in the business authorized under the
1877 permit issued pursuant to this chapter part, is hazardous to the
1878 public health, or constitutes business operations that are a
1879 detriment to the public health;

1880 2. A violation of any provision of this chapter part;

1881 3. A violation of any rule of the department;

1882 4. A violation of any order of the department; or

1883 5. A breach of any written agreement with the department.

1884 (2) REMOVAL OF AFFILIATED PARTIES BY THE DEPARTMENT.—

1885 (a) The department may issue and serve a complaint stating

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1886 charges upon any affiliated party and upon the permittee
1887 involved whenever the department has reason to believe that an
1888 affiliated party is engaging in or has engaged in conduct that
1889 constitutes:

1890 1. An act that demonstrates a lack of fitness or
1891 trustworthiness to engage in the business authorized under the
1892 permit issued pursuant to this chapter part, is hazardous to the
1893 public health, or constitutes business operations that are a
1894 detriment to the public health;

1895 2. A willful violation of this chapter part; however, if
1896 the violation constitutes a misdemeanor, a complaint may not be
1897 served as provided in this section until the affiliated party is
1898 notified in writing of the matter of the violation and has been
1899 afforded a reasonable period of time, as set forth in the
1900 notice, to correct the violation and has failed to do so;

1901 3. A violation of any other law involving fraud or moral
1902 turpitude which constitutes a felony;

1903 4. A willful violation of any rule of the department;

1904 5. A willful violation of any order of the department; or

1905 6. A material misrepresentation of fact, made knowingly and
1906 willfully or made with reckless disregard for the truth of the
1907 matter.

1908 Section 37. Section 499.067, Florida Statutes, is amended
1909 to read:

1910 499.067 Denial, suspension, or revocation of permit,
1911 certification, or registration.—

1912 (1)(a) The department may deny, suspend, or revoke a permit
1913 if it finds that there has been a substantial failure to comply
1914 with this chapter part or chapter 465, chapter 501, or chapter

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1915 893, the rules adopted under this chapter part or those
 1916 chapters, any final order of the department, or applicable
 1917 federal laws or regulations or other state laws or rules
 1918 governing drugs, devices, or cosmetics.

1919 (b) The department may deny an application for a permit or
 1920 certification, or suspend or revoke a permit or certification,
 1921 if the department finds that:

1922 1. The applicant is not of good moral character or that it
 1923 would be a danger or not in the best interest of the public
 1924 health, safety, and welfare if the applicant were issued a
 1925 permit or certification.

1926 2. The applicant has not met the requirements for the
 1927 permit or certification.

1928 3. The applicant is not eligible for a permit or
 1929 certification for any of the reasons enumerated in s. 499.012.

1930 4. The applicant, permittee, or person certified under s.
 1931 499.012(16) demonstrates any of the conditions enumerated in s.
 1932 499.012.

1933 5. The applicant, permittee, or person certified under s.
 1934 499.012(16) has committed any violation of ss. 499.005-499.0054.

1935 (2) The department may deny, suspend, or revoke any
 1936 registration required by the provisions of this chapter part for
 1937 the violation of any provision of this chapter part or of any
 1938 rules adopted under this chapter part.

1939 (3) The department may revoke or suspend a permit:

1940 (a) If the permit was obtained by misrepresentation or
 1941 fraud or through a mistake of the department;

1942 (b) If the permit was procured, or attempted to be
 1943 procured, for any other person by making or causing to be made

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1944 any false representation; or

1945 (c) If the permittee has violated any provision of this
 1946 chapter part or rules adopted under this chapter part.

1947 (4) If any permit issued under this chapter part is revoked
 1948 or suspended, the owner, manager, operator, or proprietor of the
 1949 establishment shall cease to operate as the permit authorized,
 1950 from the effective date of the suspension or revocation until
 1951 the person is again registered with the department and possesses
 1952 the required permit. If a permit is revoked or suspended, the
 1953 owner, manager, or proprietor shall remove all signs and symbols
 1954 that identify the operation as premises permitted as a drug
 1955 wholesaling establishment; drug, device, or cosmetic
 1956 manufacturing establishment; or retail establishment. The
 1957 department shall determine the length of time for which the
 1958 permit is to be suspended. If a permit is revoked, the person
 1959 that owns or operates the establishment may not apply for any
 1960 permit under this chapter part for a period of 1 year after the
 1961 date of the revocation. A revocation of a permit may be
 1962 permanent if the department considers that to be in the best
 1963 interest of the public health.

1964 (5) The department may deny, suspend, or revoke a permit
 1965 issued under this chapter part which authorizes the permittee to
 1966 purchase prescription drugs if any owner, officer, employee, or
 1967 other person who participates in administering or operating the
 1968 establishment has been found guilty of any violation of this
 1969 chapter part or chapter 465, chapter 501, or chapter 893, any
 1970 rules adopted under this chapter part or those chapters, or any
 1971 federal or state drug law, regardless of whether the person has
 1972 been pardoned, had her or his civil rights restored, or had

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1973 adjudication withheld.

1974 (6) The department shall deny, suspend, or revoke the
1975 permit of any person or establishment if the assignment, sale,
1976 transfer, or lease of an establishment permitted under this
1977 ~~chapter part~~ will avoid an administrative penalty, civil action,
1978 or criminal prosecution.

1979 (7) Notwithstanding s. 120.60(5), if a permittee fails to
1980 comply with s. 499.012(6) or s. 499.83, as applicable, the
1981 department may revoke the permit of the permittee and shall
1982 provide notice of the intended agency action by posting a notice
1983 at the department's headquarters and by mailing a copy of the
1984 notice of intended agency action by certified mail to the most
1985 recent mailing address on record with the department and, if the
1986 permittee is not a natural person, to the permittee's registered
1987 agent on file with the Department of State.

1988 (8) The department may deny, suspend, or revoke a permit
1989 under this part if it finds the permittee has not complied with
1990 the credentialing requirements of s. 499.0121(15).

1991 (9) The department may deny, suspend, or revoke a permit
1992 under this part if it finds the permittee has not complied with
1993 the reporting requirements of, or knowingly made a false
1994 statement in a report required by, s. 499.0121(14).

1995 Section 38. This act shall take effect October 1, 2014.

1996



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

February 7, 2014

Senator Kelli Stargel, Chair
Regulated Industries
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Stargel:

This letter is to request that SB 836 relating to Compressed Medical Gas be placed on the agenda of the next scheduled meeting of the Regulated Industries Committee.

The proposed legislation would create a new part of Florida Statute defining Medical Gas, and Requiring a person or establishment located inside or outside the state which intends to distribute medical gas within or into this state to obtain an applicable permit before operating; requiring the Department of Business and Professional Regulation to establish the form and content of an application; setting the minimum requirements for the storage and handling of medical gas; authorizing the department to require a facility that engages in wholesale distribution to undergo an inspection.

Thank you for your consideration of this request.

Respectfully,

A handwritten signature in cursive script that reads "Aaron Bean".

Aaron Bean
State Senator, 4th District

Cc: Patrick "Booter" Imhof, Staff Director
Lynn Koon, Committee Administrative Assistant

/jk

REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 798

INTRODUCER: Senator Ring

SUBJECT: Real and Personal Property

DATE: February 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	AP	_____

I. Summary:

SB 798 relates to the operation of condominium associations, cooperative associations, and homeowners' associations.

In regards to homeowners' associations, the bill clarifies the notice requirements for the preservation of association covenants and restrictions under the Marketable Record Title Act.

In regards to the condominium associations, the bill:

- Provides that an amendment to an association's governing documents that prohibits unit owners from renting their units, that alters the duration of the rental term, specifies or limits the number of times unit owners are entitled to rent their units during a specified period does not apply to unit owners that voted against the amendment;
- Authorizes the associations to enter an abandoned unit to inspect the unit, and adjoining common elements, to make specific repairs, and to maintain the unit, and permits the association to charge the unit owner for expenses incurred by the association;
- Permits board and committee members to participate, including voting, in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication, for such participation to count towards a quorum; and
- Extends the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

In regards to cooperative associations, the bill:

- Revises the financial reporting requirements by increasing from 60 to 90 days the time to prepare a financial statement, or to contract with a third party to prepare the financial statement, and by specifying the type of financial reporting required based on the association's total annual revenue amounts;

- Limits the financial reporting requirement, for associations of fewer than 50 units, regardless of the association's annual revenues, to the preparation of a report of cash receipts and expenditures, unless otherwise required by the declaration or other recorded governing documents;
- Provides that persons who have been suspended or removed by the division or are delinquent in the payment of any monetary obligation due to the association are not eligible to be a candidate for board membership and may not be listed on the ballot;
- Provides for the removal from office of a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property;
- Requires boards to place the item on the agenda at its next regular board meeting or at a special meeting of the board when 20 percent of the voting interests petition the board to address an item of business; and
- Provides that the term of a board member who was appointed or elected to fill a vacancy on the board expires at the next annual meeting.

In regards to condominium and cooperative associations, the bill requires outgoing board or committee members to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. The bill provides that an outgoing board or committee member who violates this requirement is personally subject to a civil penalty by the Division of Florida Condominiums, Timeshares, and Mobile Homes;

In regards to cooperative and homeowners' associations, the bill:

- Authorizes boards to exercise specified emergency powers in response to the declaration of a state of emergency, including the authority to implement a disaster plan, mitigate damages, and borrow money with the approval of the membership; and
- Provides that, in order to determine the liability of the present owner of a unit, the previous owner does not include an association that acquires the title to a delinquent property through foreclosure or by deed in lieu of foreclosure.

In regards to condominium, cooperative, and homeowners' associations, the bill provides that a unit owner is jointly and severally liable with the previous owner not only for all unpaid assessments, but also interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Marketable Record Title Act

The Marketable Record Title Act (MRTA or act),¹ may cause covenants to lapse by operation of law if the covenants are silent as to expiration, or if the 30-year period in the act is shorter than the stated expiration time.

¹ Chapter 712, F.S.,

Sections 712.02, F.S., provides that:

Any person having the legal capacity to own land in this state, who, alone or together with her or his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03. A person shall have a marketable record title when the public records disclosed a record title transaction affecting the title to the land which has been of record for not less than 30 years purporting to create such estate either in:

- (1) The person claiming such estate; or
- (2) Some other person from whom, by one or more title transactions, such estate has passed to the person claiming such estate, with nothing appearing of record, in either case, purporting to divest such claimant of the estate claimed.

Sections 712.05 and 712.06, F.S., provide the process, including notice requirements, for the recording of interest in land and the preservation of covenants and restrictions for community associations which may be extinguished under operation of the act.

Section 720.405(1), F.S., requires that a written notice must be recorded to claim an interest in land and to preserve and protect from extinguishment any covenants or restrictions. Section 720.05, F.S., provides:

Any person claiming an interest in land or a homeowners' association desiring to preserve any covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall have the effect of so preserving such claim of right or such covenant or restriction or portion of such covenant or restriction for a period of not longer than 30 years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

- (a) Under a disability,
- (b) Unable to assert a claim on his or her behalf, or
- (c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of marketable title action described in s. 712.06(1)(b), was mailed or hand delivered to members of the homeowners' association not less than 7 days prior to such meeting.

For covenants that have expired, residents in these communities have the option to revive the covenants after the expiration by following the procedure in ss. 720.403 - 720.407, F.S. The covenant revitalization procedures in ss. 720.403 - 720.407, F.S., are not available to homeowners' associations not governed by ch. 720, F.S., e.g., associations governing communities that are comprised of property primarily intended for commercial, industrial, or other non-residential use.² Non-mandatory associations may not revive covenants pursuant to ss. 702.403 - 702.407, F.S., because ch. 720, F.S., relates to residential homeowners' associations where membership is a mandatory condition for the owners of property.

Section 712.06, F.S., specifies the contents of the notice required under s. 712.05, F.S. Section 712.06(3), F.S., also provides for the service of the notice by the clerk of the circuit court. Section 712.06(3), F.S., provides:

- (3) The person providing the notice referred to in s. 712.05 shall:
 - (a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(8) and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(12). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this _____, mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

 (Clerk of the circuit court)
 of County, Florida,
 By (Deputy clerk)

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or

- (b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05, with the official record book and page number in which such notice was recorded, in a newspaper as defined in chapter 50 in the county in which the property is located.

According to the Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL), s. 712.06(3), F.S., requires clerk notification or publication for the notice of preservation

² Section 720.301(8) and (11), F.S.

concerning homeowners' association covenants and restrictions. According to RPPTL, compliance with the notice required under s. 712.06(3), F.S., in the context of the preservation of homeowners' association covenants and restrictions is impracticable because of the large amount of space required to publish the notice which may include tens or hundreds of pages of recorded instruments.

Condominium

A condominium is a “form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”³ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁴ A declaration is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.⁵

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”⁶ A declaration of condominium may be amended as provided in the declaration.⁷ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.⁸ Condominiums are administered by a board of directors referred to as a “board of administration.”⁹

Section 718.103(8), F.S., defines the term “common elements” to mean the portions of the condominium property not included in the units.

Section 718.103(12), F.S., defines the term “condominium parcel” to mean a unit, together with the undivided share in the common elements appurtenant to the unit.

Section 718.103(19), F.S., defines the term “limited common elements” to mean those common elements that are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

Section 718.103(23), F.S., defines the term “residential condominium” to mean:

a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily

³ Section 718.103(11), F.S.

⁴ Section 718.104(2), F.S.

⁵ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁶ Section 718.104(5), F.S.

⁷ See s. 718.110(1)(a), F.S.

⁸ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁹ Section 718.103(4), F.S.

commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35) shall govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404.

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” to mean:

That form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.¹⁰

Homeowners’ Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹¹

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”¹² Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.¹³

¹⁰ See ss. 719.106(1)(g) and 719.107, F.S.

¹¹ See s. 720.302(1), F.S.

¹² Section 720.301(9), F.S.

¹³ Section 720.302(5), F.S.

Homeowners' associations are administered by a board of directors whose members are elected.¹⁴ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.¹⁵ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁶

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) in accordance with ch. 718, F.S.

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with chapter 718, F.S. with respect to associations that are still under developer control.¹⁷ The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.¹⁸

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., authorizes the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Chapters 718, 719, and 720, F.S.

Although condominiums and cooperatives are regulated by the division, homeowners' associations are not regulated. Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for requirements for the governance of these associations. For example, they delineate requirements for notices of meetings,¹⁹ recordkeeping requirements, including which records are accessible to the members of the association,²⁰ and financial reporting.²¹ Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

Rental of Condominium Units

Section 718.110(13), F.S., provides that any amendment of the declaration of condominium that prohibits unit owners from renting their units, that alters the duration of the rental term, specifies

¹⁴ See ss. 720.303 and 720.307, F.S.

¹⁵ See ss. 720.301 and 720.303, F.S.

¹⁶ Section 720.303(1), F.S.

¹⁷ Section 718.501(1), F.S.

¹⁸ Section 718.501(1), F.S. See Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

¹⁹ See s. 718.112(2), F.S., for condominiums, s. 719.106(2), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.

²⁰ See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners' associations.

²¹ See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners' associations.

or limits the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.

Right of Access to Units – Condominiums and Cooperatives

Section 718.111(5), F.S., provides that condominium associations have an irrevocable right of access to each unit during reasonable hours. They have the right to access units when necessary to maintain, repair, or replace any common elements or of any portion of a unit that the association must maintain in accordance with the declaration or as necessary to prevent damage to the common elements or to a unit or units.

Section 719.104(1), F.S., provides a comparable provision for cooperative associations.

Condominium Bylaws-Meetings of the Board

Section 718.112(2)(b)5., F.S., members of the condominium board to meet by telephone conference. Members who appear by teleconference may be counted toward obtaining a quorum and may vote as if physically present. A telephone speaker must be used to permit the conversation to be heard by other board members and any unit owners who may be present.

Condominiums and Cooperatives – Assessments and Foreclosures

Current law defines an “assessment” as the “share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.”²²

“Special assessment” is defined to mean, “any assessment levied against a unit owner other than the assessment required by a budget adopted annually.”²³

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is *without prejudice*²⁴ to any right the owner may have to recover from the previous owner the amounts paid by the owner.²⁵

Section 719.108, F.S., provides a comparable liability provision for cooperative associations.

If a first mortgagee, (e.g., the mortgage lending institution) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee’s liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or one percent of the original mortgage debt, whichever is less.²⁶ However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.²⁷ In the foreclosure action, the association may defend its claims for unpaid assessments. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first

²² Section 718.103(1), F.S.

²³ Section 718.103(24), F.S.

²⁴ The term “without prejudice” means “[w]ithout loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party.” BLACK’S LAW DICTIONARY (9th ed. 2009).

²⁵ Section 718.116(1)(a), F.S.

²⁶ Section 718.116(1)(b), F.S.

²⁷ *Id.*

mortgage was recorded prior to April 1, 1992.²⁸ The successor or assignee, with respect to the first mortgage, includes only a subsequent holder of the first mortgage.²⁹

Section 718.116(3), F.S., provides for the accrual of interest on unpaid assessments. Unpaid assessments and installments on assessments accrue interest at the rate provided in the declaration from the due date until paid. The rate may not exceed the rate allowed by law.³⁰ If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year.³¹ The association may also charge an administrative late fee of up to the greater of \$25 or five percent of each installment of the assessment for each delinquent installment for which the payment is late.³² Payments are applied first to the interest accrued, then the administrative late fee, then to any costs and attorney's fees incurred in collection, and then to the delinquent assessment.³³

Distressed Condominium Relief Act

The "Distressed Condominium Relief Act" in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

Section 718.703(1), F.S., defines the term "bulk assignee" to mean a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

Section 718.703(2), F.S., defines the term "bulk buyer" as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in this section.

Section 718.704(1), F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2015. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Financial Reporting for Cooperatives

Section 719.104(4), F.S., sets forth the financial reporting responsibilities of cooperative associations. Cooperative associations have 60 days after the end of the fiscal year or calendar year to prepare and complete a financial report for the preceding fiscal year. The report must be

²⁸ Section 718.116(1)(e), F.S.

²⁹ Section 718.116(1)(g), F.S.

³⁰ Section 687.02(2), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

³¹ Section 718.116(3), F.S.

³² *Id.*

³³ *Id.*

mailed or furnished by personal delivery to each unit owner. The report must be a complete financial report of actual receipts and expenditures for the previous 12 months, or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting procedures (GAAP).

Section 719.104(4)(a), F.S., specifies the accounts and expenses that must be shown in the report. It provides in pertinent part:

The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to, the following:

1. Costs for security;
2. Professional and management fees and expenses;
3. Taxes;
4. Costs for recreation facilities;
5. Expenses for refuse collection and utility services;
6. Expenses for lawn care;
7. Costs for building maintenance and repair;
8. Insurance costs;
9. Administrative and salary expenses; and
10. Reserves for capital expenditures, deferred maintenance, and any other category for which the association maintains a reserve account or accounts.

Section 719.104(4)(b), F.S., requires that the division adopt rules that may require that the association deliver to the unit owners, in lieu of the financial report required by this section, a complete set of financial statements for the preceding fiscal year.³⁴ The financial statements must be delivered within 90 days following the end of the previous fiscal year or annually on such other date as provided in the bylaws. The division's rules may require that the financial statements be compiled, reviewed, or audited, and the rules shall take into consideration the criteria set forth in s. 719.501(1)(j), F.S.³⁵

Cooperative associations may waive the requirement to have financial statements compiled, reviewed, or audited at a duly called meeting of the association.³⁶ In an association that is under developer control, the developer may vote to waive the audit requirement for the first two years of the operation of the association, after which time waiver of an applicable audit requirement requires the approval of a majority of voting interests other than the developer. The meeting must be held prior to the end of the fiscal year, and the waiver is effective for only one fiscal year.

The reporting requirements in s. 719.401(4), F.S., do not apply to a cooperative that consists of 50 or fewer units.³⁷

³⁴ See rule 61B-76.006, F.A.C., for the division's financial reporting requirements for cooperative associations.

³⁵ Section 719.501(1)(j), F.S., authorizes the division to adopt uniform accounting principles, policies, and standards to be used by all associations in the preparation and presentation of all financial statements required by ch. 719, F.S. The principles, policies, and standards must take into consideration the size of the association and the total revenue collected by the association.

³⁶ Section 719.104(4)(b), F.S.

³⁷ *Id.*

Financial Reporting for Condominium and Homeowners' Associations

Section 718.111(13), F.S., sets forth the financial reporting responsibilities of homeowners' associations. Homeowners' associations have 90 days after the end of the fiscal year to prepare and complete a financial report for the preceding fiscal year. The type of financial statements or information that must be provided is based on the association's total annual revenues.

Section 718.111(13)(a), F.S., provides, in part, that if the association has a total annual revenue of \$150,000 or more, but less than \$300,000, the association must prepare compiled financial statements.³⁸ If the association has a total annual revenue of at least \$300,000 and not less than \$500,000, the association must prepare reviewed financial statements.³⁹ If the total annual revenue is \$500,000 or more, the association must prepare audited financial statements.⁴⁰ If the total annual revenue is less than \$150,000, then a report of cash receipts must be prepared.⁴¹ An association having less than 50 parcels, regardless of annual revenue, may prepare a report of cash receipt and expenditures instead of financial statements, unless the governing documents provide otherwise.⁴²

The amounts of total annual revenue and the type of financial statement requirements are identical to the financial reporting requirements for homeowners' associations in s. 720.303(7), F.S.

III. Effect of Proposed Changes:

Marketable Record Title Act

The bill amends s. 712.05(1), F.S., to provide that the homeowners' association or the clerk of the circuit court is not required to provide notice other than as provided under s. 712.06(3), F.S., the bill also provides that this provision is intended to clarify existing law.

Rental of Condominium Units

The bill amends s. 718.110(13), F.S., to provide that an amendment that prohibits unit owners from renting their units, that alters the duration of the rental term, specifies or limits the number of times unit owners are entitled to rent their units during a specified period does not apply to unit owners that voted against the amendment. It does apply to unit owners who consented to the amendment, failed to cast a vote on the amendment, or acquired title after the effective date of the amendment.

³⁸ A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

³⁹ A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

⁴⁰ An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

⁴¹ Section 718.111(13)(b)1., F.S.

⁴² Section 718.111(13)(b)2., F.S.

Right of Access to Units – Condominiums

The bill creates s. 718.111(5)(b), F.S., to expand the authority of the board to enter abandoned condominium units. Section 718.111(5)(b)1., F.S., provides that, at the sole direction of the board, the association may enter an abandoned unit to inspect it and adjoining common elements, to make specific repairs, and to maintain the unit. This includes repairs to the unit or common elements serving the unit. The bill permits the board to enter an abandoned unit to repair damage from mold, to determine if any mold or deterioration is present, to turn on the power for the unit, and to otherwise maintain, preserve, and protect the unit and adjoining common elements.

Section 718.111(5)(b)1., F.S., provides that a unit is presumed to be abandoned if it is subject to a foreclosure action and not been resided in for at least four continuous weeks without prior notice to the association. A unit is also presumed abandoned if a person has not resided in the unit for at least two consecutive months without notice to the association and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry. The bill does not define what efforts to determine the whereabouts of the owner would constitute reasonable inquiry.

Section 718.111(5)(b)2., F.S., provides that, except in the case of an emergency, an association may not enter a unit until after 48 hours' notice of intent to enter has been delivered to the owner at the address of the owner as reflected in the records of the association.

Section 718.111(5)(b)3., F.S., permits the association to charge the unit owner for any expense incurred by the association. The charge is enforceable as an assessment pursuant to s. 718.116, F.S., and the association may use its lien authority provided in s. 718.116, F.S., to enforce collection of the expense. This provision does not provide guidance as the type of expenses that the association may incur and assign to the unit owner, e.g., it does not distinguish between the actual cost to repair mold or deterioration of the property and administrative expenses incurred by the association in its efforts to contact the unit owner.

Section 718.111(5)(b)4., F.S., authorizes the association to petition a court of competent jurisdiction to appoint a receiver and to rent an abandoned unit for the benefit of the association to offset the association's costs and expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs of collection, and attorney fees against the rental income.

Condominiums - Official Records

The bill also creates s. 718.111(12)(f), F.S., to require an outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. The bill provides that outgoing board or committee member who violates this requirement is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S.⁴³ The requirement that the records and property

⁴³ Section 718.501(1)(d), F.S., authorizes the division to impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division. The civil penalty may not exceed \$5,000.

must be relinquished within five days after an election may not apply, or may be vague, in circumstances in which an election is not held to fill a vacancy on the board, e.g., s. 718.112(2)(d)2., F.S., provides that an election is not required if the number of vacancies equals or exceeds the number of candidates.

The bill provides a comparable provision for cooperative associations in s. 719.104(2)(e), F.S.

Condominiums - Bylaws-Meetings of the Board

The bill amends s. 718.112(2)(b)5., F.S., to permit a board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication to count towards a quorum and that the member can vote as if present. There is a comparable provision in current law for meetings of the board of cooperative associations.⁴⁴

The bill also amends s. 718.112(2)(c), F.S., to provide that a board member may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.

Condominiums-Assessments

The bill amends s. 718.116(1)(a), F.S., to provide that a unit owner is jointly and severally liable with the previous owner not only for all unpaid assessments, but also interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. The bill provides a comparable provision for cooperative associations in s. 719.108(1), F.S., and for homeowners' associations in s

The bill also provides that the previous owner does not include an association that acquires the title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for these costs associated with the collection process is limited to the amounts that accrued before the association acquired the title to the delinquent property. Current law provides a comparable provision for homeowners' associations in s. 720.3085(2)(b), F.S. The bill provides a comparable provision for cooperative associations in s. 719.108(1), F.S.

Distressed Condominium Relief Act

The bill amends s. 718.707, F.S., to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

Cooperatives - Official Records

The bill also creates s. 719.104(2)(e), F.S., to require an outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. The bill provides that outgoing board or committee member who violates this requirement is personally subject to a civil penalty pursuant to s. 719.501(1)(d), F.S.⁴⁵

The bill provides a comparable provision for condominium associations in s. 718.111(12)(f), F.S.

⁴⁴ Section 719.106(2)(b)5., F.S.

⁴⁵ Section 719.501(1)(d)4., F.S., authorizes the division to impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division. The civil penalty may not exceed \$5000.

Cooperatives – Financial Reporting

The bill amends s. 719.104(4), F.S., to specify the type of financial reporting that a cooperative association must prepare. The bill increases the time that the board has to prepare a financial statement from 60 to 90 days. It is unclear under the bill whether the board has 90 days to contract with a third party to prepare the financial statement or whether the third party must complete the financial statement within the 90 days. It provides that within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge. The bylaws may provide for different time frames for the financial report.

The bill deletes the current provisions concerning the preparation and distribution of the financial statements which requires a complete financial report of receipts and expenditures for the previous 12 months or a complete set of financial statements for the preceding fiscal year prepared by generally accepted accounting procedures. It provides that the new financial reports must conform to generally accepted accounting principles. The type of reporting is based on the association's total annual revenue.

An association with total annual revenues between \$150,000 and \$299,000 must prepare compiled financial statements. An association having total annual revenues of at least \$300,000, but less than \$499,999 must prepare reviewed financial statements. An association with total revenues of \$500,000 or more must prepare audited financial statements.

Section 719.104(4)(c)1., F.S., provides that an association with total annual revenue of less than \$150,000 must prepare a report of cash receipts and expenditures.

These financial reporting thresholds are comparable to those required under the division's current financial reporting rule for cooperatives.⁴⁶ The thresholds are also comparable to the financial reporting thresholds for condominiums in s. 718.111(13), F.S., and for homeowners' associations in s. 720.303(7), F.S.

Section 719.104(4)(c)2., F.S., provides that an association of fewer than 50 units, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures, unless otherwise required by the declaration or other recorded governing documents.

The Institute of Certified Public Accountants has raised concerns about the smaller associations being exempt from the monetary requirements for reports. The institute is concerned that some smaller associations may have substantial assets and expenses that should have the same reporting requirements.

Section 719.104(4)(c)3., F.S., specifies the receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications that must be disclosed in the report of cash receipts and expenditures.

⁴⁶ See rule 61B-76.006, F.A.C.

Section 719.104(4)(d), F.S., provides that, if at least 20 percent of the unit owners petition the board for a greater level of financial reporting than required under s. 719.104, F.S., the association must duly notice and hold a meeting of the members within 30 days after receipt of the petition to vote on raising the level of reporting. Upon approval by a majority of the voting interests present at the meeting, the association must prepare an amended budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration or other recorded governing documents. Section 719.104(4)(d), F.S., also requires that the association provide the following within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

- Compiled, reviewed or audited financial statements be prepared if the association is otherwise required to prepare a report of cash receipts and expenditures;
- Reviewed or audited financial statements be prepared if the association is otherwise required to prepare compiled financial statements; or
- Audited financial statements be prepared if the association is otherwise required to prepare reviewed financial statements.

Section 719.104(4)(e), F.S., provides that, if approved by a majority of voting interests present at a duly called meeting, an association may prepare or cause to be prepared:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement or a reviewed financial statement in lieu of an audited financial statement.

Cooperatives – Officers and Directors

The bill amends s. 719.106(1)(a)2., F.S., to provide that a person who has been suspended or removed by the division under ch. 719, F.S.,⁴⁷ or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. Section 718.112(2)(d)2., F.S., provides a comparable provision for condominium associations in current law.

Section 719.106(1)(a)2., F.S., also provides that a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first.⁴⁸ While the criminal charge is pending, the officer or director may not be appointed or elected to a position as a director or officer. The director or officer must be

⁴⁷ Section 719.501(1)(d)6., F.S., authorizes the division to order the removal of an officer or board member who has willfully and knowingly violated a provision of ch. 719, F.S., adopted rule, or a final order of the division.

⁴⁸ Section 719.106(1)(d)6., F.S., provides for the filling of a vacancy, unless otherwise provided in the bylaws. If a vacancy occurs on the board before the expiration of a term, it may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. Alternatively, a board may hold an election to fill the vacancy. Unless otherwise provided in the bylaws, a board member appointed or elected under this subparagraph shall fill the vacancy for the unexpired term of the seat being filled.

reinstated for the remainder of his or her term of office, if any, if the charges are resolved without a finding of guilt. Section 718.112(2)(o), F.S., provides a comparable provision in current law for condominium associations.

This provision also provides that a person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least five years as of the date such person seeks election to the board. The bill provides that the validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. Section 718.112(2)(d)2., F.S., provides a comparable provision in current law for condominium associations.

Meetings of the Board

The bill amends s. 719.106(1)(c), F.S., to require that notice of board meetings must specifically identify all agenda items. The bill also provides that, if 20 percent of the voting interests petition the board to address an item of business, the board must place the item on the agenda at its next regular board meeting or at a special meeting of the board. The item must be placed on an agenda no later than 60 days after the petition is received. Section 718.112(1)(c)1., F.S., provides a comparable provision for condominium associations.

The bill amends s. 719.106(1)(d)6., F.S., to provide that the term of a board member who was appointed or elected to fill a vacancy on the board expires at the next annual meeting. It deletes the current provision that appointed or elected member shall fill the unexpired term of the seat being filled.

Cooperatives-Assessments

The bill amends s. 719.108(1), F.S., to provide that a unit owner is jointly and severally liable with the previous owner not only for all unpaid assessments, but also interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. The bill provides a comparable provision for condominium associations in s. 718.116(1)(a), F.S., and homeowners' associations in s. 720.3085(2)(b), F.S.

The bill also provides that the previous owner does not include an association that acquires the title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for these costs associated with the collection process is limited to the amounts that accrued before the association acquired the title to the delinquent property. Current law provides a comparable provision for homeowners' associations in s. 720.3085(2)(b), F.S. The bill provides a comparable provision for condominium associations in s. 718.116(1)(a), F.S.

Emergency Powers for Cooperative Boards

The bill creates s. 719.128, F.S., to authorize the boards of cooperative associations, to the extent allowed by law, to exercise the following emergency powers in response to the declaration of a

state of emergency in accordance with s. 252.36(2), F.S.,⁴⁹ or a mandatory evacuation order is issued by civil or law enforcement authorities.

The association's articles of incorporation or bylaws may specifically prohibit the exercise of the powers granted by the bill. The exercise of authority must also be consistent with the standards of s. 617.0830, F.S., which sets forth the general standards for directors of a corporation not for profit, including acting in good faith, acting with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and acting in a manner that he or she reasonably believes to be in the best interests of the corporation.

The bill authorizes the board to:

- Conduct board or membership meetings with notice of the meetings and the board's decisions by any means the board deems appropriate and practical under the circumstances;
- Cancel and reschedule any association meeting;
- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability;
- Relocate the principal office or designate alternative principal offices;
- Provide notice of board meetings decisions by posted signs, mailed notice to members, internet postings, public service announcements, or any other means of communication which the board deems reasonable under the circumstances;
- Enter into agreements with counties and municipalities for debris removal;
- Implement a disaster plan prior to, or after, a catastrophic event, including shutting down elevators, electricity, water, sewer, security systems or air conditioners;
- Based on the advice of emergency management officials or licensed professionals retained by the board, declare any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees in order to protect the health, safety, or welfare of such persons;
- Based on the advice of emergency management officials or license professionals retained by the board, determine whether the condominium property can be safely inhabited or occupied. However, such evaluation is not conclusive as to any determination of habitability pursuant to the declaration; and
- Require the evacuation of the property. The association is immune from liability for injury to persons or property arising from the failure to follow an evacuation required by the board.

In response to damage caused by an event for which a state of emergency is declared in accordance with s. 252.36(2), F.S., the association may:

- Mitigate further damage, including preventing or eradicating fungus, mold, or mildew by removing wet drywall, insulation, carpet, cabinetry, or other fixtures, even if the unit owner is obligated by the declaration or law to insure or replace such items, and removing personal property from a unit;

⁴⁹ Section 252.36, F.S., provides emergency management powers to the Governor. Section 252.36(2), F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if she or he finds an emergency has occurred or is imminent.

- Contract, on behalf of the unit owner, for services which are necessary to prevent further damage to the cooperative property, including:
 - drying of units,
 - boarding of broken windows or doors, and
 - replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property;
- Levy special assessments without a vote of the owners; and
- Borrow money and pledge association assets as collateral without unit owner approval.

The bill provides that the grant of authority to condominium boards to borrow money is not intended to limit the general authority of the association to borrow money.

The bill provides that the use of the special powers authorized under this section is limited to those times and circumstances that are reasonably necessary to the health, safety, and welfare of persons, and to mitigate further damage and make emergency repairs.

Current law provides a comparable provision for condominium associations in s. 718.1265, F.S. The bill provides a comparable provision for cooperative associations in s. 720.316, F.S.

Homeowners' Associations – Assessments

The bill amends s. 720.3085(2)(b), F.S., to provide that a unit owner is jointly and severally liable with the previous owner not only for all unpaid assessments, but also interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. The previous owner does not include an association that acquires the title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for these costs associated with the collection process is limited to the amounts that accrued before the association acquired the title to the delinquent property.

The bill provides a comparable provision for condominium associations in s. 718.116(1)(a), F.S., and cooperative associations in s. 719.108(1), F.S.

Emergency Powers for Homeowners' Association Boards

The bill creates s. 720.316, F.S., to authorize the boards of homeowners' associations, to the extent allowed by law, to exercise the following emergency powers in response to the declaration of a state of emergency in accordance with s. 252.36(2), F.S.,⁵⁰ or a mandatory evacuation order is issued by civil or law enforcement authorities.

The association's articles of incorporation or bylaws may specifically prohibit the exercise of the powers granted by the bill. The exercise of authority must also be consistent with the standards of s. 617.0830, F.S., which sets forth the general standards for directors of a corporation not for profit, including acting in good faith, acting with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and acting in a manner that he or she reasonably believes to be in the best interests of the corporation.

⁵⁰ Section 252.36, F.S., provides emergency management powers to the Governor. Section 252.36(2), F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if she or he finds an emergency has occurred or is imminent.

The bill authorizes the board to:

- Conduct board meetings with notice given only to directors with whom it is practicable to communicate;
- Cancel and reschedule any association meeting;
- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability;
- Relocate the principal office or designate alternative principal offices;
- Provide notice of board meetings decisions by posted signs, mailed notice to members, internet postings, public service announcements, or any other means of communication which the board deems reasonable under the circumstances;
- Enter into agreements with counties and municipalities for debris removal;
- Implement a disaster plan prior to, or after, a catastrophic event, including shutting down elevators, electricity, water, sewer, security systems or air conditioners;
- Based on the advice of emergency management officials or licensed professionals retained by the board, declare any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees in order to protect the health, safety, or welfare of such persons; and
- Based on the advice of emergency management officials or licensed professionals retained by the board, determine whether the condominium property can be safely inhabited or occupied. However, such evaluation is not conclusive as to any determination of habitability pursuant to the declaration.

In response to damage caused by an event for which a state of emergency is declared in accordance with s. 252.36(2), F.S., the association may:

- Mitigate further damage, including preventing or eradicating fungus, mold, or mildew by removing wet drywall, insulation, carpet, cabinetry, or other fixtures on or within association property;
- Levy special assessments without a vote of the owners; and
- Borrow money and pledge association assets as collateral without unit owner approval.

The bill provides that the grant of authority to homeowners' association boards to borrow money is not intended to limit the general authority of the association to borrow money.

The bill provides that the use of the special powers authorized under this section is limited to those times and circumstances that are reasonably necessary to the health, safety, and welfare of persons, and to mitigate further damage and make emergency repairs.

Current law provides a comparable provision for condominium associations in s. 718.1265, F.S. The bill provides a comparable provision for cooperative associations in s. 719.128, F.S.

Effective Date

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 712.05, 718.110, 718.111, 718.112, 718.116, 718.707, 719.104, 719.106, 719.108, and 720.3085.

This bill creates sections 719.128 and 720.316 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) of section 509.013, Florida
Statutes, is amended 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



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11 subparagraph 2.

12 1. "Transient public lodging establishment" means any unit,
13 group of units, dwelling, building, or group of buildings within
14 a single complex of buildings which is rented to guests more
15 than three times in a calendar year for periods of less than 30
16 days or 1 calendar month, whichever is less, or which is
17 advertised or held out to the public as a place regularly rented
18 to guests.

19 2. "Nontransient public lodging establishment" means any
20 unit, group of units, dwelling, building, or group of buildings
21 within a single complex of buildings which is rented to guests
22 for periods of at least 30 days or 1 calendar month, whichever
23 is less, or which is advertised or held out to the public as a
24 place regularly rented to guests for periods of at least 30 days
25 or 1 calendar month.

26
27 License classifications of public lodging establishments, and
28 the definitions therefor, are set out in s. 509.242. For the
29 purpose of licensure, the term does not include condominium
30 common elements as defined in s. 718.103.

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

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

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



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

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

52 5. Any migrant labor camp or residential migrant housing
53 permitted by the Department of Health under ss. 381.008-
54 381.00895.

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

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

60 8. Any apartment building inspected by the United States
61 Department of Housing and Urban Development or other entity
62 acting on the department's behalf that is designated primarily
63 as housing for persons at least 62 years of age. The division
64 may require the operator of the apartment building to attest in
65 writing that such building meets the criteria provided in this
66 subparagraph. The division may adopt rules to implement this
67 requirement.

68 9. Any roominghouse, boardinghouse, or other living or



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69 sleeping facility that may not be classified as a hotel, motel,
70 timeshare project, vacation rental, nontransient apartment, bed
71 and breakfast inn, or transient apartment under s. 509.242.

72 Section 2. Paragraph (a) of subsection (2) of section
73 509.032, Florida Statutes, is amended to read:

74 509.032 Duties.—

75 (2) INSPECTION OF PREMISES.—

76 (a) The division has responsibility and jurisdiction for
77 all inspections required by this chapter. The division has
78 responsibility for quality assurance. Each licensed
79 establishment shall be inspected at least biannually, except for
80 transient and nontransient apartments, which shall be inspected
81 at least annually, and shall be inspected at such other times as
82 the division determines is necessary to ensure the public's
83 health, safety, and welfare. The division shall establish a
84 system to determine inspection frequency. Public lodging units
85 classified as vacation rentals or as timeshare projects are not
86 subject to this requirement but shall be made available to the
87 division upon request. If, during the inspection of a public
88 lodging establishment classified for renting to transient or
89 nontransient tenants, an inspector identifies vulnerable adults
90 who appear to be victims of neglect, as defined in s. 415.102,
91 or, in the case of a building that is not equipped with
92 automatic sprinkler systems, tenants or clients who may be
93 unable to self-preserve in an emergency, the division shall
94 convene meetings with the following agencies as appropriate to
95 the individual situation: the Department of Health, the
96 Department of Elderly Affairs, the area agency on aging, the
97 local fire marshal, the landlord and affected tenants and



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98 clients, and other relevant organizations, to develop a plan
99 which improves the prospects for safety of affected residents
100 and, if necessary, identifies alternative living arrangements
101 such as facilities licensed under part II of chapter 400 or
102 under chapter 429.

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

105 509.221 Sanitary regulations.—

106 (9) Subsections (2), (5), and (6) do not apply to any
107 facility or unit classified as a vacation rental, ~~or~~
108 nontransient apartment, or timeshare project as described in s.
109 509.242(1)(c) -(e) ~~and (d)~~.

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

112 509.241 Licenses required; exceptions.—

113 (2) APPLICATION FOR LICENSE.—Each person who plans to open
114 a public lodging establishment or a public food service
115 establishment shall apply for and receive a license from the
116 division prior to the commencement of operation. A condominium
117 association, as defined in s. 718.103, which does not own any
118 units classified as timeshare projects or vacation rentals under
119 s. 509.242(1)(c) and (d) is not required to apply for or receive
120 a public lodging establishment license.

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

123 509.242 Public lodging establishments; classifications.—

124 (1) A public lodging establishment shall be classified as a
125 hotel, motel, nontransient apartment, transient apartment, bed
126 and breakfast inn, timeshare project, or vacation rental if the



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127 establishment satisfies the following criteria:

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

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

141 (c) *Timeshare project*.—A timeshare project is any timeshare
142 property as defined in chapter 721 which is located in this
143 state and which is also a transient public lodging
144 establishment.

145 (d) ~~(e)~~ *Vacation rental*.—A vacation rental is any unit or
146 group of units in a condominium, or cooperative, ~~or timeshare~~
147 ~~plan~~ or any individually or collectively owned single-family,
148 two-family, three-family, or four-family house or dwelling unit
149 that is also a transient public lodging establishment and that
150 is not a timeshare project.

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

154 (f) ~~(e)~~ *Transient apartment*.—A transient apartment is a
155 building or complex of buildings in which more than 25 percent



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156 of the units are advertised or held out to the public as
157 available for transient occupancy.

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

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

167 509.251 License fees.—

168 (1) The division shall adopt, by rule, a schedule of fees
169 to be paid by each public lodging establishment as a
170 prerequisite to issuance or renewal of a license. Such fees
171 shall be based on the number of rental units in the
172 establishment. The aggregate fee per establishment charged any
173 public lodging establishment shall not exceed \$1,000; however,
174 the fees described in paragraphs (a) and (b) may not be included
175 as part of the aggregate fee subject to this cap. Vacation
176 rental units or timeshare projects within separate buildings or
177 at separate locations but managed by one licensed agent may be
178 combined in a single license application, and the division shall
179 charge a license fee as if all units in the application are in a
180 single licensed establishment. The fee schedule shall require an
181 establishment which applies for an initial license to pay the
182 full license fee if application is made during the annual
183 renewal period or more than 6 months prior to the next such
184 renewal period and one-half of the fee if application is made 6



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185 months or less prior to such period. The fee schedule shall
186 include fees collected for the purpose of funding the
187 Hospitality Education Program, pursuant to s. 509.302, which are
188 payable in full for each application regardless of when the
189 application is submitted.

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

195 (b) A license renewal filed with the division within 30
196 days after the expiration date shall be accompanied by a
197 delinquent fee as prescribed by rule, not to exceed \$50, in
198 addition to the renewal fee and any other fees required by law.
199 A license renewal filed with the division more than 30 but not
200 more than 60 days after the expiration date shall be accompanied
201 by a delinquent fee as prescribed by rule, not to exceed \$100,
202 in addition to the renewal fee and any other fees required by
203 law.

204 Section 7. Subsection (1) of section 712.05, Florida
205 Statutes, is amended to read:

206 712.05 Effect of filing notice.—

207 (1) A ~~Any~~ person claiming an interest in land or a
208 homeowners' association desiring to preserve a a ~~any~~ covenant or
209 restriction may preserve and protect the same from
210 extinguishment by the operation of this act by filing for
211 record, during the 30-year period immediately following the
212 effective date of the root of title, a written notice, ~~in~~
213 ~~writing~~, in accordance with this chapter. ~~Such the provisions~~



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214 ~~hereof, which notice preserves shall have the effect of so~~
215 ~~preserving~~ such claim of right or such covenant or restriction
216 or portion of such covenant or restriction for up to a period of
217 ~~not longer than~~ 30 years after filing the notice same unless the
218 notice is filed again filed as required in this chapter herein.

219 A person's ~~No~~ disability or lack of knowledge of any kind may
220 not on the part of anyone shall delay the commencement of or
221 suspend the running of the said 30-year period. Such notice may
222 be filed for record by the claimant or by any other person
223 acting on behalf of a any claimant who is:

224 (a) Under a disability;;

225 (b) Unable to assert a claim on his or her behalf;; or

226 (c) One of a class, but whose identity cannot be
227 established or is uncertain at the time of filing such notice of
228 claim for record.

229
230 Such notice may be filed by a homeowners' association only if
231 the preservation of such covenant or restriction or portion of
232 such covenant or restriction is approved by at least two-thirds
233 of the members of the board of directors of an incorporated
234 homeowners' association at a meeting for which a notice, stating
235 the meeting's time and place and containing the statement of
236 marketable title action described in s. 712.06(1)(b), was mailed
237 or hand delivered to members of the homeowners' association at
238 least not less than 7 days before prior to such meeting. The
239 homeowners' association or clerk of the circuit court is not
240 required to provide notice other than as provided under s.
241 712.06(3). The preceding sentence is intended to clarify
242 existing law.



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243 Section 8. Subsection (13) of section 718.110, Florida
244 Statutes, is amended to read:

245 718.110 Amendment of declaration; correction of error or
246 omission in declaration by circuit court.—

247 (13) An amendment that prohibits ~~prohibiting~~ unit owners
248 from renting their units or altering the duration of the rental
249 term or that specifies or limits ~~specifying or limiting~~ the
250 number of times unit owners are entitled to rent their units
251 during a specified period does not apply ~~applies only~~ to unit
252 owners who voted against ~~consent to~~ the amendment. However, such
253 amendment applies to unit owners who consented to the amendment,
254 who failed to cast a vote, or and unit owners who acquired
255 acquire title to their units after the effective date of the
256 ~~that~~ amendment.

257 Section 9. Subsection (5), paragraph (j) of subsection
258 (11), and paragraph (c) of subsection (12) of section 718.111,
259 Florida Statutes, are amended, and paragraph (f) is added to
260 subsection (12) of that section, to read:

261 718.111 The association.—

262 (5) RIGHT OF ACCESS TO UNITS.—

263 (a) The association has the irrevocable right of access to
264 each unit during reasonable hours, when necessary for the
265 maintenance, repair, or replacement of any common elements or of
266 any portion of a unit to be maintained by the association
267 pursuant to the declaration or as necessary to prevent damage to
268 the common elements or to a unit ~~or units~~.

269 (b)1. In addition to the association's right of access in
270 paragraph (a) and regardless of whether authority is provided in
271 the declaration or other recorded condominium documents, an



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272 association, at the sole discretion of the board, may enter an
273 abandoned unit to inspect the unit and adjoining common
274 elements; make repairs to the unit or to the common elements
275 servicing the unit, as needed; repair the unit if mold or
276 deterioration is present; turn on the utilities for the unit; or
277 otherwise maintain, preserve, or protect the unit and adjoining
278 common elements. For purposes of this paragraph, a unit is
279 presumed to be abandoned if:

280 a. The unit is the subject of a foreclosure action and no
281 tenant appears to have resided in the unit for at least 4
282 continuous weeks without prior written notice to the
283 association; or

284 b. No tenant appears to have resided in the unit for 2
285 consecutive months without prior written notice to the
286 association, and the association is unable to contact the owner
287 or determine the whereabouts of the owner after reasonable
288 inquiry.

289 2. Except in the case of an emergency, an association may
290 not enter an abandoned unit until 2 days after notice of the
291 association's intent to enter the unit has been mailed or hand
292 delivered to the owner at the address of the owner as reflected
293 in the records of the association. The notice may be given by
294 electronic transmission to a unit owner who has consented to
295 receive notice by electronic transmission.

296 3. Any expense incurred by an association pursuant to this
297 paragraph is chargeable to the unit owner and enforceable as an
298 assessment pursuant to s. 718.116, and the association may use
299 its lien authority provided by s. 718.116 to enforce collection
300 of the expense.



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301 4. The association may petition a court of competent
302 jurisdiction to appoint a receiver and may lease out an
303 abandoned unit for the benefit of the association to offset
304 against the rental income the association's costs and expenses
305 of maintaining, preserving, and protecting the unit and the
306 adjoining common elements, including the costs of the
307 receivership and all unpaid assessments, interest,
308 administrative late fees, costs, and reasonable attorney fees.

309 (11) INSURANCE.—In order to protect the safety, health, and
310 welfare of the people of the State of Florida and to ensure
311 consistency in the provision of insurance coverage to
312 condominiums and their unit owners, this subsection applies to
313 every residential condominium in the state, regardless of the
314 date of its declaration of condominium. It is the intent of the
315 Legislature to encourage lower or stable insurance premiums for
316 associations described in this subsection.

317 (j) Any portion of the condominium property that must be
318 insured by the association against property loss pursuant to
319 paragraph (f) which is damaged by an insurable event shall be
320 reconstructed, repaired, or replaced as necessary by the
321 association as a common expense. In the absence of an insurable
322 event, responsibility for reconstruction, repair, or replacement
323 shall be by the association or by the unit owners, as determined
324 by the provisions of the declaration or bylaws. All property
325 insurance deductibles, uninsured losses, and other damages in
326 excess of property insurance coverage under the property
327 insurance policies maintained by the association are a common
328 expense of the condominium, except that:

329 1. A unit owner is responsible for the costs of repair or



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330 replacement of any portion of the condominium property not paid
331 by insurance proceeds if such damage is caused by intentional
332 conduct, negligence, or failure to comply with the terms of the
333 declaration or the rules of the association by a unit owner, the
334 members of his or her family, unit occupants, tenants, guests,
335 or invitees, without compromise of the subrogation rights of the
336 insurer.

337 2. The provisions of subparagraph 1. regarding the
338 financial responsibility of a unit owner for the costs of
339 repairing or replacing other portions of the condominium
340 property also apply to the costs of repair or replacement of
341 personal property of other unit owners or the association, as
342 well as other property, whether real or personal, which the unit
343 owners are required to insure.

344 3. To the extent the cost of repair or reconstruction for
345 which the unit owner is responsible under this paragraph is
346 reimbursed to the association by insurance proceeds, and the
347 association has collected the cost of such repair or
348 reconstruction from the unit owner, the association shall
349 reimburse the unit owner without the waiver of any rights of
350 subrogation.

351 4. The association is not obligated to pay for
352 reconstruction or repairs of property losses as a common expense
353 if the property losses were known or should have been known to a
354 unit owner and were not reported to the association until after
355 the insurance claim of the association for that property was
356 settled or resolved with finality, or denied because it was
357 untimely filed.

358 (12) OFFICIAL RECORDS.—



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359 (c) The official records of the association are open to
360 inspection by any association member or the authorized
361 representative of such member at all reasonable times. The right
362 to inspect the records includes the right to make or obtain
363 copies, at the reasonable expense, if any, of the member. The
364 association may adopt reasonable rules regarding the frequency,
365 time, location, notice, and manner of record inspections and
366 copying. The failure of an association to provide the records
367 within 10 working days after receipt of a written request
368 creates a rebuttable presumption that the association willfully
369 failed to comply with this paragraph. A unit owner who is denied
370 access to official records is entitled to the actual damages or
371 minimum damages for the association's willful failure to comply.
372 Minimum damages are \$50 per calendar day for up to 10 days,
373 beginning on the 11th working day after receipt of the written
374 request. The failure to permit inspection entitles any person
375 prevailing in an enforcement action to recover reasonable
376 attorney fees from the person in control of the records who,
377 directly or indirectly, knowingly denied access to the records.
378 Any person who knowingly or intentionally defaces or destroys
379 accounting records that are required by this chapter to be
380 maintained during the period for which such records are required
381 to be maintained, or who knowingly or intentionally fails to
382 create or maintain accounting records that are required to be
383 created or maintained, with the intent of causing harm to the
384 association or one or more of its members, is personally subject
385 to a civil penalty pursuant to s. 718.501(1)(d). The association
386 shall maintain an adequate number of copies of the declaration,
387 articles of incorporation, bylaws, and rules, and all amendments



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388 to each of the foregoing, as well as the question and answer
389 sheet as described in s. 718.504 and year-end financial
390 information required under this section, on the condominium
391 property to ensure their availability to unit owners and
392 prospective purchasers, and may charge its actual costs for
393 preparing and furnishing these documents to those requesting the
394 documents. An association shall allow a member or his or her
395 authorized representative to use a portable device, including a
396 smartphone, tablet, portable scanner, or any other technology
397 capable of scanning or taking photographs, to make an electronic
398 copy of the official records in lieu of the association's
399 providing the member or his or her authorized representative
400 with a copy of such records. The association may not charge a
401 member or his or her authorized representative for the use of a
402 portable device. Notwithstanding this paragraph, the following
403 records are not accessible to unit owners:

404 1. Any record protected by the lawyer-client privilege as
405 described in s. 90.502 and any record protected by the work-
406 product privilege, including a record prepared by an association
407 attorney or prepared at the attorney's express direction, which
408 reflects a mental impression, conclusion, litigation strategy,
409 or legal theory of the attorney or the association, and which
410 was prepared exclusively for civil or criminal litigation or for
411 adversarial administrative proceedings, or which was prepared in
412 anticipation of such litigation or proceedings until the
413 conclusion of the litigation or proceedings.

414 2. Information obtained by an association in connection
415 with the approval of the lease, sale, or other transfer of a
416 unit.



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417 3. Personnel records of association or management company
418 employees, including, but not limited to, disciplinary, payroll,
419 health, and insurance records. For purposes of this
420 subparagraph, the term "personnel records" does not include
421 written employment agreements with an association employee or
422 management company, or budgetary or financial records that
423 indicate the compensation paid to an association employee.

424 4. Medical records of unit owners.

425 5. Social security numbers, driver's license numbers,
426 credit card numbers, e-mail addresses, telephone numbers,
427 facsimile numbers, emergency contact information, addresses of a
428 unit owner other than as provided to fulfill the association's
429 notice requirements, and other personal identifying information
430 of any person, excluding the person's name, unit designation,
431 mailing address, property address, and any address, e-mail
432 address, or facsimile number provided to the association to
433 fulfill the association's notice requirements. Notwithstanding
434 the restrictions in this subparagraph, an association may print
435 and distribute to parcel owners a directory containing the name,
436 parcel address, and all telephone numbers ~~number~~ of each parcel
437 owner. However, an owner may exclude his or her telephone number
438 from the directory by so requesting in writing to the
439 association. An owner may consent in writing to the disclosure
440 of other contact information described in this subparagraph. The
441 association is not liable for the inadvertent disclosure of
442 information that is protected under this subparagraph if the
443 information is included in an official record of the association
444 and is voluntarily provided by an owner and not requested by the
445 association.



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446 6. Electronic security measures that are used by the
447 association to safeguard data, including passwords.

448 7. The software and operating system used by the
449 association which allow the manipulation of data, even if the
450 owner owns a copy of the same software used by the association.
451 The data is part of the official records of the association.

452 (f) An outgoing board or committee member must relinquish
453 all official records and property of the association in his or
454 her possession or under his or her control to the incoming board
455 within 5 days after the election. The division shall impose a
456 civil penalty as set forth in s. 718.501(1)(d)6. against an
457 outgoing board or committee member who willfully and knowingly
458 fails to relinquish such records and property.

459 Section 10. Paragraphs (b) and (c) of subsection (2) of
460 section 718.112, Florida Statutes, are amended to read:

461 718.112 Bylaws.—

462 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
463 following and, if they do not do so, shall be deemed to include
464 the following:

465 (b) *Quorum; voting requirements; proxies.*—

466 1. Unless a lower number is provided in the bylaws, the
467 percentage of voting interests required to constitute a quorum
468 at a meeting of the members is a majority of the voting
469 interests. Unless otherwise provided in this chapter or in the
470 declaration, articles of incorporation, or bylaws, and except as
471 provided in subparagraph (d)4., decisions shall be made by a
472 majority of the voting interests represented at a meeting at
473 which a quorum is present.

474 2. Except as specifically otherwise provided herein, unit



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475 owners may not vote by general proxy, but may vote by limited
476 proxies substantially conforming to a limited proxy form adopted
477 by the division. A voting interest or consent right allocated to
478 a unit owned by the association may not be exercised or
479 considered for any purpose, whether for a quorum, an election,
480 or otherwise. Limited proxies and general proxies may be used to
481 establish a quorum. Limited proxies shall be used for votes
482 taken to waive or reduce reserves in accordance with
483 subparagraph (f)2.; for votes taken to waive the financial
484 reporting requirements of s. 718.111(13); for votes taken to
485 amend the declaration pursuant to s. 718.110; for votes taken to
486 amend the articles of incorporation or bylaws pursuant to this
487 section; and for any other matter for which this chapter
488 requires or permits a vote of the unit owners. Except as
489 provided in paragraph (d), a proxy, limited or general, may not
490 be used in the election of board members. General proxies may be
491 used for other matters for which limited proxies are not
492 required, and may be used in voting for nonsubstantive changes
493 to items for which a limited proxy is required and given.
494 Notwithstanding this subparagraph, unit owners may vote in
495 person at unit owner meetings. This subparagraph does not limit
496 the use of general proxies or require the use of limited proxies
497 for any agenda item or election at any meeting of a timeshare
498 condominium association.

499 3. Any proxy given is effective only for the specific
500 meeting for which originally given and any lawfully adjourned
501 meetings thereof. A proxy is not valid longer than 90 days after
502 the date of the first meeting for which it was given and may be
503 revoked. ~~Every proxy is revocable~~ at any time at the pleasure of



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504 the unit owner executing it.

505 4. A member of the board of administration or a committee
506 may submit in writing his or her agreement or disagreement with
507 any action taken at a meeting that the member did not attend.
508 This agreement or disagreement may not be used as a vote for or
509 against the action taken or to create a quorum.

510 5. A ~~If any of the board or committee member's~~
511 participation in a meeting via telephone, real-time
512 videoconferencing, or similar real-time electronic or video
513 communication counts toward a quorum, and such member may vote
514 as if physically present ~~members meet by telephone conference,~~
515 ~~those board or committee members may be counted toward obtaining~~
516 ~~a quorum and may vote by telephone.~~ A telephone speaker must be
517 used so that the conversation of such ~~those~~ members may be heard
518 by the board or committee members attending in person as well as
519 by any unit owners present at a meeting.

520 (c) *Board of administration meetings.*—Meetings of the board
521 of administration at which a quorum of the members is present
522 are open to all unit owners. Members of the board of
523 administration may use e-mail as a means of communication but
524 may not cast a vote on an association matter via e-mail. A unit
525 owner may tape record or videotape the meetings. The right to
526 attend such meetings includes the right to speak at such
527 meetings with reference to all designated agenda items. The
528 division shall adopt reasonable rules governing the tape
529 recording and videotaping of the meeting. The association may
530 adopt written reasonable rules governing the frequency,
531 duration, and manner of unit owner statements.

532 1. Adequate notice of all board meetings, which must



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533 specifically identify all agenda items, must be posted
534 conspicuously on the condominium property at least 48 continuous
535 hours before the meeting except in an emergency. If 20 percent
536 of the voting interests petition the board to address an item of
537 business, the board, within 60 days after receipt of the
538 petition, shall place the item on the agenda at its next regular
539 board meeting or at a special meeting called for that purpose of
540 the board, but not later than 60 days after the receipt of the
541 petition, shall place the item on the agenda. An Any item not
542 included on the notice may be taken up on an emergency basis by
543 a vote of at least a majority plus one of the board members.
544 Such emergency action must be noticed and ratified at the next
545 regular board meeting. However, written notice of a any meeting
546 at which a nonemergency special assessment assessments, or an at
547 which amendment to rules regarding unit use, will be considered
548 must be mailed, delivered, or electronically transmitted to the
549 unit owners and posted conspicuously on the condominium property
550 at least 14 days before the meeting. Evidence of compliance with
551 this 14-day notice requirement must be made by an affidavit
552 executed by the person providing the notice and filed with the
553 official records of the association. Upon notice to the unit
554 owners, the board shall, by duly adopted rule, designate a
555 specific location on the condominium or association property
556 where all notices of board meetings must are to be posted. If
557 there is no condominium property or association property where
558 notices can be posted, notices shall be mailed, delivered, or
559 electronically transmitted to each unit owner at least 14 days
560 before the meeting to the owner of each unit. In lieu of or in
561 addition to the physical posting of the notice on the



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562 condominium property, the association may, by reasonable rule,
563 adopt a procedure for conspicuously posting and repeatedly
564 broadcasting the notice and the agenda on a closed-circuit cable
565 television system serving the condominium association. However,
566 if broadcast notice is used in lieu of a notice physically
567 posted on condominium property, the notice and agenda must be
568 broadcast at least four times every broadcast hour of each day
569 that a posted notice is otherwise required under this section.
570 If broadcast notice is provided, the notice and agenda must be
571 broadcast in a manner and for a sufficient continuous length of
572 time so as to allow an average reader to observe the notice and
573 read and comprehend the entire content of the notice and the
574 agenda. Notice of any meeting in which regular or special
575 assessments against unit owners are to be considered ~~for any~~
576 ~~reason~~ must specifically state that assessments will be
577 considered and provide the nature, estimated cost, and
578 description of the purposes for such assessments.

579 2. Meetings of a committee to take final action on behalf
580 of the board or make recommendations to the board regarding the
581 association budget are subject to this paragraph. Meetings of a
582 committee that does not take final action on behalf of the board
583 or make recommendations to the board regarding the association
584 budget are subject to this section, unless those meetings are
585 exempted from this section by the bylaws of the association.

586 3. Notwithstanding any other law, the requirement that
587 board meetings and committee meetings be open to the unit owners
588 does not apply to:

589 a. Meetings between the board or a committee and the
590 association's attorney, with respect to proposed or pending



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591 litigation, if the meeting is held for the purpose of seeking or
592 rendering legal advice; or

593 b. Board meetings held for the purpose of discussing
594 personnel matters.

595 Section 11. Paragraph (a) of subsection (1) of section
596 718.116, Florida Statutes, is amended to read:

597 718.116 Assessments; liability; lien and priority;
598 interest; collection.-

599 (1)(a) A unit owner, regardless of how his or her title has
600 been acquired, including by purchase at a foreclosure sale or by
601 deed in lieu of foreclosure, is liable for all assessments which
602 come due while he or she is the unit owner. Additionally, a unit
603 owner is jointly and severally liable with the previous owner
604 for all unpaid assessments that came due up to the time of
605 transfer of title, as well as interest, late charges, and
606 reasonable costs and attorney fees incurred by the association
607 incident to the collection process. This liability is without
608 prejudice to any right the owner may have to recover from the
609 previous owner the amounts paid by the owner. For the purposes
610 of this paragraph, the term "previous owner" does not include an
611 association that acquires title to a delinquent property through
612 foreclosure or by deed in lieu of foreclosure. The present
613 parcel owner's liability for unpaid assessments, interest, late
614 charges, and reasonable costs and attorney fees incurred by the
615 association incident to the collection process is limited to
616 those amounts that accrued before the association acquired title
617 to the delinquent property through foreclosure or by deed in
618 lieu of foreclosure.

619 Section 12. Section 718.707, Florida Statutes, is amended



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620 to read:

621 718.707 Time limitation for classification as bulk assignee
622 or bulk buyer.—A person acquiring condominium parcels may not be
623 classified as a bulk assignee or bulk buyer unless the
624 condominium parcels were acquired on or after July 1, 2010, but
625 before July 1, 2016 ~~2015~~. The date of such acquisition shall be
626 determined by the date of recording a deed or other instrument
627 of conveyance for such parcels in the public records of the
628 county in which the condominium is located, or by the date of
629 issuing a certificate of title in a foreclosure proceeding with
630 respect to such condominium parcels.

631 Section 13. Paragraph (c) of subsection (2) and subsection
632 (4) of section 719.104, Florida Statutes, are amended, and
633 paragraph (e) is added to subsection (4) of that section, to
634 read:

635 719.104 Cooperatives; access to units; records; financial
636 reports; assessments; purchase of leases.—

637 (2) OFFICIAL RECORDS.—

638 (c) The official records of the association are open to
639 inspection by any association member or the authorized
640 representative of such member at all reasonable times. The right
641 to inspect the records includes the right to make or obtain
642 copies, at the reasonable expense, if any, of the association
643 member. The association may adopt reasonable rules regarding the
644 frequency, time, location, notice, and manner of record
645 inspections and copying. The failure of an association to
646 provide the records within 10 working days after receipt of a
647 written request creates a rebuttable presumption that the
648 association willfully failed to comply with this paragraph. A



649 unit owner who is denied access to official records is entitled
650 to the actual damages or minimum damages for the association's
651 willful failure to comply. The minimum damages are \$50 per
652 calendar day for up to 10 days, beginning on the 11th working
653 day after receipt of the written request. The failure to permit
654 inspection entitles any person prevailing in an enforcement
655 action to recover reasonable attorney fees from the person in
656 control of the records who, directly or indirectly, knowingly
657 denied access to the records. Any person who knowingly or
658 intentionally defaces or destroys accounting records that are
659 required by this chapter to be maintained during the period for
660 which such records are required to be maintained, or who
661 knowingly or intentionally fails to create or maintain
662 accounting records that are required to be created or
663 maintained, with the intent of causing harm to the association
664 or one or more of its members, is personally subject to a civil
665 penalty pursuant to s. 719.501(1)(d). The association shall
666 maintain an adequate number of copies of the declaration,
667 articles of incorporation, bylaws, and rules, and all amendments
668 to each of the foregoing, as well as the question and answer
669 sheet as described in s. 719.504 and year-end financial
670 information required by the department, on the cooperative
671 property to ensure their availability to unit owners and
672 prospective purchasers, and may charge its actual costs for
673 preparing and furnishing these documents to those requesting the
674 same. An association shall allow a member or his or her
675 authorized representative to use a portable device, including a
676 smartphone, tablet, portable scanner, or any other technology
677 capable of scanning or taking photographs, to make an electronic



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678 copy of the official records in lieu of the association
679 providing the member or his or her authorized representative
680 with a copy of such records. The association may not charge a
681 member or his or her authorized representative for the use of a
682 portable device. Notwithstanding this paragraph, the following
683 records shall not be accessible to unit owners:

684 1. Any record protected by the lawyer-client privilege as
685 described in s. 90.502 and any record protected by the work-
686 product privilege, including any record prepared by an
687 association attorney or prepared at the attorney's express
688 direction which reflects a mental impression, conclusion,
689 litigation strategy, or legal theory of the attorney or the
690 association, and which was prepared exclusively for civil or
691 criminal litigation or for adversarial administrative
692 proceedings, or which was prepared in anticipation of such
693 litigation or proceedings until the conclusion of the litigation
694 or proceedings.

695 2. Information obtained by an association in connection
696 with the approval of the lease, sale, or other transfer of a
697 unit.

698 3. Personnel records of association or management company
699 employees, including, but not limited to, disciplinary, payroll,
700 health, and insurance records. For purposes of this
701 subparagraph, the term "personnel records" does not include
702 written employment agreements with an association employee or
703 management company, or budgetary or financial records that
704 indicate the compensation paid to an association employee.

705 4. Medical records of unit owners.

706 5. Social security numbers, driver license numbers, credit



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707 card numbers, e-mail addresses, telephone numbers, facsimile
708 numbers, emergency contact information, addresses of a unit
709 owner other than as provided to fulfill the association's notice
710 requirements, and other personal identifying information of any
711 person, excluding the person's name, unit designation, mailing
712 address, property address, and any address, e-mail address, or
713 facsimile number provided to the association to fulfill the
714 association's notice requirements. Notwithstanding the
715 restrictions in this subparagraph, an association may print and
716 distribute to parcel owners a directory containing the name,
717 parcel address, and all telephone numbers ~~number~~ of each parcel
718 owner. However, an owner may exclude his or her telephone number
719 from the directory by so requesting in writing to the
720 association. An owner may consent in writing to the disclosure
721 of other contact information described in this subparagraph. The
722 association is not liable for the inadvertent disclosure of
723 information that is protected under this subparagraph if the
724 information is included in an official record of the association
725 and is voluntarily provided by an owner and not requested by the
726 association.

727 6. Electronic security measures that are used by the
728 association to safeguard data, including passwords.

729 7. The software and operating system used by the
730 association which allow the manipulation of data, even if the
731 owner owns a copy of the same software used by the association.
732 The data is part of the official records of the association.

733 (e) An outgoing board or committee member must relinquish
734 all official records and property of the association in his or
735 her possession or under his or her control to the incoming board



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736 within 5 days after the election. The division shall impose a
737 civil penalty as set forth in s. 719.501(1)(d) against an
738 outgoing board or committee member who willfully and knowingly
739 fails to relinquish such records and property.

740 (4) FINANCIAL REPORT.—

741 (a) Within 90 ~~60~~ days following the end of the fiscal or
742 calendar year or annually on such date as ~~is otherwise~~ provided
743 in the bylaws of the association, the board of administration ~~of~~
744 ~~the association~~ shall prepare and complete, or contract with a
745 third party to prepare and complete, a financial report covering
746 the preceding fiscal or calendar year. Within 21 days after the
747 financial report is completed by the association or received
748 from the third party, but no later than 120 days after the end
749 of the fiscal year, calendar year, or other date provided in the
750 bylaws, the association shall provide each member with a copy of
751 the annual financial report or a written notice that a copy of
752 the financial report is available upon request at no charge to
753 the member. The division shall adopt rules setting forth uniform
754 accounting principles, standards, and reporting requirements
755 ~~mail or furnish by personal delivery to each unit owner a~~
756 ~~complete financial report of actual receipts and expenditures~~
757 ~~for the previous 12 months, or a complete set of financial~~
758 ~~statements for the preceding fiscal year prepared in accordance~~
759 ~~with generally accepted accounting procedures. The report shall~~
760 ~~show the amounts of receipts by accounts and receipt~~
761 ~~classifications and shall show the amounts of expenses by~~
762 ~~accounts and expense classifications including, if applicable,~~
763 ~~but not limited to, the following:~~

764 ~~1. Costs for security;~~



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765 ~~2. Professional and management fees and expenses;~~
766 ~~3. Taxes;~~
767 ~~4. Costs for recreation facilities;~~
768 ~~5. Expenses for refuse collection and utility services;~~
769 ~~6. Expenses for lawn care;~~
770 ~~7. Costs for building maintenance and repair;~~
771 ~~8. Insurance costs;~~
772 ~~9. Administrative and salary expenses; and~~
773 ~~10. Reserves for capital expenditures, deferred~~
774 ~~maintenance, and any other category for which the association~~
775 ~~maintains a reserve account or accounts.~~

776 (b) Except as provided in paragraph (c), an association
777 whose total annual revenues meet the criteria of this paragraph
778 shall prepare or cause to be prepared a complete financial
779 statement according to the generally accepted accounting
780 principles adopted by the Board of Accountancy. The financial
781 statement shall be as follows:

782 1. An association with total annual revenues between
783 \$150,000 and \$299,999 shall prepare a compiled financial
784 statement.

785 2. An association with total annual revenues between
786 \$300,000 and \$499,999 shall prepare a reviewed financial
787 statement.

788 3. An association with total annual revenues of \$500,000 or
789 more shall prepare an audited financial statement ~~The division~~
790 ~~shall adopt rules that may require that the association deliver~~
791 ~~to the unit owners, in lieu of the financial report required by~~
792 ~~this section, a complete set of financial statements for the~~
793 ~~preceding fiscal year. The financial statements shall be~~



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794 ~~delivered within 90 days following the end of the previous~~
795 ~~fiscal year or annually on such other date as provided in the~~
796 ~~bylaws. The rules of the division may require that the financial~~
797 ~~statements be compiled, reviewed, or audited, and the rules~~
798 ~~shall take into consideration the criteria set forth in s.~~
799 ~~719.501(1)(j).~~

800
801 The requirement to have the financial statement ~~statements~~
802 compiled, reviewed, or audited does not apply to an association
803 ~~associations~~ if a majority of the voting interests of the
804 association present at a duly called meeting of the association
805 have voted ~~determined for a fiscal year~~ to waive this
806 requirement for the fiscal year. In an association in which
807 turnover of control by the developer has not occurred, the
808 developer may vote to waive the audit requirement for the first
809 2 years of ~~the~~ operation of the association, after which time
810 waiver of an applicable audit requirement shall be by a majority
811 of voting interests other than the developer. The meeting shall
812 be held prior to the end of the fiscal year, and the waiver
813 shall be effective for only one fiscal year. An association may
814 not waive the financial reporting requirements of this section
815 for more than 3 consecutive years ~~This subsection does not apply~~
816 ~~to a cooperative that consists of 50 or fewer units.~~

817 (c)1. An association with total annual revenues of less
818 than \$150,000 shall prepare a report of cash receipts and
819 expenditures.

820 2. An association in a community of fewer than 50 units,
821 regardless of the association's annual revenues, shall prepare a
822 report of cash receipts and expenditures in lieu of the



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823 financial statement required by paragraph (b), unless the
824 declaration or other recorded governing documents provide
825 otherwise.

826 3. A report of cash receipts and expenditures must disclose
827 the amount of receipts by accounts and receipt classifications
828 and the amount of expenses by accounts and expense
829 classifications, including the following, as applicable: costs
830 for security; professional and management fees and expenses;
831 taxes; costs for recreation facilities; expenses for refuse
832 collection and utility services; expenses for lawn care; costs
833 for building maintenance and repair; insurance costs;
834 administration and salary expenses; and reserves, if maintained
835 by the association.

836 (d) If at least 20 percent of the unit owners petition the
837 board for a greater level of financial reporting than that
838 required by this section, the association shall duly notice and
839 hold a meeting of members within 30 days after receipt of the
840 petition to vote on raising the level of reporting for that
841 fiscal year. Upon approval by a majority of the voting interests
842 represented at a meeting at which a quorum of unit owners is
843 present, the association shall prepare an amended budget or
844 shall adopt a special assessment to pay for the financial report
845 regardless of any provision to the contrary in the declaration
846 or other recorded governing documents. In addition, the
847 association shall provide within 90 days after the meeting or
848 the end of the fiscal year, whichever occurs later:

849 1. A compiled, reviewed, or audited financial statement, if
850 the association is otherwise required to prepare a report of
851 cash receipts and expenditures;



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852 2. A reviewed or audited financial statement, if the
853 association is otherwise required to prepare a compiled
854 financial statement; or
855 3. An audited financial statement, if the association is
856 otherwise required to prepare a reviewed financial statement.
857 (e) If approved by a majority of the voting interests
858 present at a properly called meeting of the association, an
859 association may prepare or cause to be prepared:
860 1. A report of cash receipts and expenditures in lieu of a
861 compiled, reviewed, or audited financial statement;
862 2. A report of cash receipts and expenditures or a compiled
863 financial statement in lieu of a reviewed or audited financial
864 statement; or
865 3. A report of cash receipts and expenditures, a compiled
866 financial statement, or a reviewed financial statement in lieu
867 of an audited financial statement.
868 Section 14. Paragraph (a) of subsection (1) of section
869 719.106, Florida Statutes, is amended to read:
870 719.106 Bylaws; cooperative ownership.—
871 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
872 documents shall provide for the following, and if they do not,
873 they shall be deemed to include the following:
874 (a) *Administration*.—
875 1. The form of administration of the association shall be
876 described, indicating the titles of the officers and board of
877 administration and specifying the powers, duties, manner of
878 selection and removal, and compensation, if any, of officers and
879 board members. In the absence of such a provision, the board of
880 administration shall be composed of five members, except in the



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881 case of cooperatives having five or fewer units, in which case
882 in not-for-profit corporations, the board shall consist of not
883 fewer than three members. In the absence of provisions to the
884 contrary, the board of administration shall have a president, a
885 secretary, and a treasurer, who shall perform the duties of
886 those offices customarily performed by officers of corporations.
887 Unless prohibited in the bylaws, the board of administration may
888 appoint other officers and grant them those duties it deems
889 appropriate. Unless otherwise provided in the bylaws, the
890 officers shall serve without compensation and at the pleasure of
891 the board. Unless otherwise provided in the bylaws, the members
892 of the board shall serve without compensation.

893 2. A person who has been suspended or removed by the
894 division under this chapter, or who is delinquent in the payment
895 of any monetary obligation due to the association, is not
896 eligible to be a candidate for board membership and may not be
897 listed on the ballot. A director or officer charged by
898 information or indictment with a felony theft or embezzlement
899 offense involving the association's funds or property is
900 suspended from office. The board shall fill the vacancy
901 according to general law until the end of the period of the
902 suspension or the end of the director's term of office,
903 whichever occurs first. However, if the charges are resolved
904 without a finding of guilt or without acceptance of a plea of
905 guilty or nolo contendere, the director or officer shall be
906 reinstated for any remainder of his or her term of office. A
907 member who has such criminal charges pending may not be
908 appointed or elected to a position as a director or officer. A
909 person who has been convicted of any felony in this state or in



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910 any United States District Court, or who has been convicted of
911 any offense in another jurisdiction which would be considered a
912 felony if committed in this state, is not eligible for board
913 membership unless such felon's civil rights have been restored
914 for at least 5 years as of the date such person seeks election
915 to the board. The validity of an action by the board is not
916 affected if it is later determined that a board member is
917 ineligible for board membership due to having been convicted of
918 a felony.

919 3.2. When a unit owner files a written inquiry by certified
920 mail with the board of administration, the board shall respond
921 in writing to the unit owner within 30 days of receipt of the
922 inquiry. The board's response shall either give a substantive
923 response to the inquirer, notify the inquirer that a legal
924 opinion has been requested, or notify the inquirer that advice
925 has been requested from the division. If the board requests
926 advice from the division, the board shall, within 10 days of its
927 receipt of the advice, provide in writing a substantive response
928 to the inquirer. If a legal opinion is requested, the board
929 shall, within 60 days after the receipt of the inquiry, provide
930 in writing a substantive response to the inquirer. The failure
931 to provide a substantive response to the inquirer as provided
932 herein precludes the board from recovering attorney ~~attorney's~~
933 fees and costs in any subsequent litigation, administrative
934 proceeding, or arbitration arising out of the inquiry. The
935 association may, through its board of administration, adopt
936 reasonable rules and regulations regarding the frequency and
937 manner of responding to the unit owners' inquiries, one of which
938 may be that the association is obligated to respond to only one



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939 written inquiry per unit in any given 30-day period. In such
940 case, any additional inquiry or inquiries must be responded to
941 in the subsequent 30-day period, or periods, as applicable.

942 Section 15. Subsection (1) of section 719.108, Florida
943 Statutes, is amended to read:

944 719.108 Rents and assessments; liability; lien and
945 priority; interest; collection; cooperative ownership.-

946 (1) A unit owner, regardless of how title is acquired,
947 including, without limitation, a purchaser at a judicial sale,
948 shall be liable for all rents and assessments coming due while
949 the unit owner is in exclusive possession of a unit. In a
950 voluntary transfer, the unit owner in exclusive possession shall
951 be jointly and severally liable with the previous unit owner for
952 all unpaid rents and assessments against the previous unit owner
953 for his or her share of the common expenses up to the time of
954 the transfer, as well as interest, late charges, and reasonable
955 costs and attorney fees incurred by the association incident to
956 the collection process without prejudice to the rights of the
957 unit owner in exclusive possession to recover from the previous
958 unit owner the amounts paid by the unit owner in exclusive
959 possession therefor. For the purposes of this paragraph, the
960 term "previous owner" does not include an association that
961 acquires title to a delinquent property through foreclosure or
962 by deed in lieu of foreclosure. The present parcel owner's
963 liability for unpaid rents and assessments, interest, late
964 charges, and reasonable costs and attorney fees incurred by the
965 association incident to the collection process is limited to
966 those amounts that accrued before the association acquired title
967 to the delinquent property through foreclosure or by deed in



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968 lieu of foreclosure.

969 Section 16. Section 719.128, Florida Statutes, is created
970 to read:

971 719.128 Association emergency powers.-

972 (1) To the extent allowed by law, unless specifically
973 prohibited by the cooperative documents, and consistent with s.
974 617.0830, the board of administration, in response to damage
975 caused by an event for which a state of emergency is declared
976 pursuant to s. 252.36 in the area encompassed by the
977 cooperative, may exercise the following powers:

978 (a) Conduct board or membership meetings after notice of
979 the meetings and board decisions is provided in as practicable a
980 manner as possible, including via publication, radio, United
981 States mail, the Internet, public service announcements,
982 conspicuous posting on the cooperative property, or any other
983 means the board deems appropriate under the circumstances.

984 (b) Cancel and reschedule an association meeting.

985 (c) Designate assistant officers who are not directors. If
986 the executive officer is incapacitated or unavailable, the
987 assistant officer has the same authority during the state of
988 emergency as the executive officer he or she assists.

989 (d) Relocate the association's principal office or
990 designate an alternative principal office.

991 (e) Enter into agreements with counties and municipalities
992 to assist counties and municipalities with debris removal.

993 (f) Implement a disaster plan before or immediately
994 following the event for which a state of emergency is declared,
995 which may include turning on or shutting off elevators;
996 electricity; water, sewer, or security systems; or air



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997 conditioners for association buildings.

998 (g) Based upon the advice of emergency management officials
999 or upon the advice of licensed professionals retained by the
1000 board of administration, determine any portion of the
1001 cooperative property unavailable for entry or occupancy by unit
1002 owners or their family members, tenants, guests, agents, or
1003 invitees to protect their health, safety, or welfare.

1004 (h) Based upon the advice of emergency management officials
1005 or upon the advice of licensed professionals retained by the
1006 board of administration, determine whether the cooperative
1007 property can be safely inhabited or occupied. However, such
1008 determination is not conclusive as to any determination of
1009 habitability pursuant to the declaration.

1010 (i) Require the evacuation of the cooperative property in
1011 the event of a mandatory evacuation order in the area where the
1012 cooperative is located. If a unit owner or other occupant of a
1013 cooperative fails to evacuate the cooperative property for which
1014 the board has required evacuation, the association is immune
1015 from liability for injury to persons or property arising from
1016 such failure.

1017 (j) Mitigate further damage, including taking action to
1018 contract for the removal of debris and to prevent or mitigate
1019 the spread of fungus, including mold or mildew, by removing and
1020 disposing of wet drywall, insulation, carpet, cabinetry, or
1021 other fixtures on or within the cooperative property, regardless
1022 of whether the unit owner is obligated by the declaration or law
1023 to insure or replace those fixtures and to remove personal
1024 property from a unit.

1025 (k) Contract, on behalf of a unit owner, for items or



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1026 services for which the owner is otherwise individually
1027 responsible, but which are necessary to prevent further damage
1028 to the cooperative property. In such event, the unit owner on
1029 whose behalf the board has contracted is responsible for
1030 reimbursing the association for the actual costs of the items or
1031 services, and the association may use its lien authority
1032 provided by s. 719.108 to enforce collection of the charges.
1033 Such items or services may include the drying of the unit, the
1034 boarding of broken windows or doors, and the replacement of a
1035 damaged air conditioner or air handler to provide climate
1036 control in the unit or other portions of the property.

1037 (l) Notwithstanding a provision to the contrary, and
1038 regardless of whether such authority does not specifically
1039 appear in the cooperative documents, levy special assessments
1040 without a vote of the owners.

1041 (m) Without unit owners' approval, borrow money and pledge
1042 association assets as collateral to fund emergency repairs and
1043 carry out the duties of the association if operating funds are
1044 insufficient. This paragraph does not limit the general
1045 authority of the association to borrow money, subject to such
1046 restrictions contained in the cooperative documents.

1047 (2) The authority granted under subsection (1) is limited
1048 to that time reasonably necessary to protect the health, safety,
1049 and welfare of the association and the unit owners and their
1050 family members, tenants, guests, agents, or invitees, and to
1051 mitigate further damage and make emergency repairs.

1052 Section 17. Paragraph (c) of subsection (5) of section
1053 720.303, Florida Statutes, is amended to read:

1054 720.303 Association powers and duties; meetings of board;



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1055 official records; budgets; financial reporting; association
1056 funds; recalls.—

1057 (5) INSPECTION AND COPYING OF RECORDS.—The official records
1058 shall be maintained within the state for at least 7 years and
1059 shall be made available to a parcel owner for inspection or
1060 photocopying within 45 miles of the community or within the
1061 county in which the association is located within 10 business
1062 days after receipt by the board or its designee of a written
1063 request. This subsection may be complied with by having a copy
1064 of the official records available for inspection or copying in
1065 the community or, at the option of the association, by making
1066 the records available to a parcel owner electronically via the
1067 Internet or by allowing the records to be viewed in electronic
1068 format on a computer screen and printed upon request. If the
1069 association has a photocopy machine available where the records
1070 are maintained, it must provide parcel owners with copies on
1071 request during the inspection if the entire request is limited
1072 to no more than 25 pages. An association shall allow a member or
1073 his or her authorized representative to use a portable device,
1074 including a smartphone, tablet, portable scanner, or any other
1075 technology capable of scanning or taking photographs, to make an
1076 electronic copy of the official records in lieu of the
1077 association's providing the member or his or her authorized
1078 representative with a copy of such records. The association may
1079 not charge a fee to a member or his or her authorized
1080 representative for the use of a portable device.

1081 (c) The association may adopt reasonable written rules
1082 governing the frequency, time, location, notice, records to be
1083 inspected, and manner of inspections, but may not require a



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1084 parcel owner to demonstrate any proper purpose for the
1085 inspection, state any reason for the inspection, or limit a
1086 parcel owner's right to inspect records to less than one 8-hour
1087 business day per month. The association may impose fees to cover
1088 the costs of providing copies of the official records, including
1089 the costs of copying and the costs required for personnel to
1090 retrieve and copy the records if the time spent retrieving and
1091 copying the records exceeds one-half hour and if the personnel
1092 costs do not exceed \$20 per hour. Personnel costs may not be
1093 charged for records requests that result in the copying of 25 or
1094 fewer pages. The association may charge up to 25 cents per page
1095 for copies made on the association's photocopier. If the
1096 association does not have a photocopy machine available where
1097 the records are kept, or if the records requested to be copied
1098 exceed 25 pages in length, the association may have copies made
1099 by an outside duplicating service and may charge the actual cost
1100 of copying, as supported by the vendor invoice. The association
1101 shall maintain an adequate number of copies of the recorded
1102 governing documents, to ensure their availability to members and
1103 prospective members. Notwithstanding this paragraph, the
1104 following records are not accessible to members or parcel
1105 owners:

1106 1. Any record protected by the lawyer-client privilege as
1107 described in s. 90.502 and any record protected by the work-
1108 product privilege, including, but not limited to, a record
1109 prepared by an association attorney or prepared at the
1110 attorney's express direction which reflects a mental impression,
1111 conclusion, litigation strategy, or legal theory of the attorney
1112 or the association and which was prepared exclusively for civil



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1113 or criminal litigation or for adversarial administrative
1114 proceedings or which was prepared in anticipation of such
1115 litigation or proceedings until the conclusion of the litigation
1116 or proceedings.

1117 2. Information obtained by an association in connection
1118 with the approval of the lease, sale, or other transfer of a
1119 parcel.

1120 3. Personnel records of association or management company
1121 employees, including, but not limited to, disciplinary, payroll,
1122 health, and insurance records. For purposes of this
1123 subparagraph, the term "personnel records" does not include
1124 written employment agreements with an association or management
1125 company employee or budgetary or financial records that indicate
1126 the compensation paid to an association or management company
1127 employee.

1128 4. Medical records of parcel owners or community residents.

1129 5. Social security numbers, driver license numbers, credit
1130 card numbers, electronic mailing addresses, telephone numbers,
1131 facsimile numbers, emergency contact information, any addresses
1132 for a parcel owner other than as provided for association notice
1133 requirements, and other personal identifying information of any
1134 person, excluding the person's name, parcel designation, mailing
1135 address, and property address. Notwithstanding the restrictions
1136 in this subparagraph, an association may print and distribute to
1137 parcel owners a directory containing the name, parcel address,
1138 and all telephone numbers ~~number~~ of each parcel owner. However,
1139 an owner may exclude his or her telephone number from the
1140 directory by so requesting in writing to the association. An
1141 owner may consent in writing to the disclosure of other contact



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1142 information described in this subparagraph. The association is
1143 not liable for the disclosure of information that is protected
1144 under this subparagraph if the information is included in an
1145 official record of the association and is voluntarily provided
1146 by an owner and not requested by the association.

1147 6. Any electronic security measure that is used by the
1148 association to safeguard data, including passwords.

1149 7. The software and operating system used by the
1150 association which allows the manipulation of data, even if the
1151 owner owns a copy of the same software used by the association.
1152 The data is part of the official records of the association.

1153 Section 18. Paragraph (b) of subsection (1) of section
1154 720.306, Florida Statutes, is amended to read:

1155 720.306 Meetings of members; voting and election
1156 procedures; amendments.—

1157 (1) QUORUM; AMENDMENTS.—

1158 (b) Unless otherwise provided in the governing documents or
1159 required by law, and other than those matters set forth in
1160 paragraph (c), any governing document of an association may be
1161 amended by the affirmative vote of two-thirds of the voting
1162 interests of the association. Within 30 days after recording an
1163 amendment to the governing documents, the association shall
1164 provide copies of the amendment to the members. Further, if a
1165 copy of the proposed amendment had been previously provided to
1166 the members before the vote of the members on the amendment and
1167 the proposed amendment was not changed before the vote of the
1168 members, the association may, in lieu of providing a copy of the
1169 amendment, provide notice that the amendment was adopted,
1170 provide in the notice the official book and page number or



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1171 instrument number of the recorded amendment, and provide notice
1172 that a copy of the amendment is available at no charge to the
1173 member upon written request to the association. The copies and
1174 notice described herein may be provided electronically to those
1175 owners who have consented to receive notice electronically.

1176 Section 19. Paragraph (b) of subsection (2) of section
1177 720.3085, Florida Statutes, is amended to read:

1178 720.3085 Payment for assessments; lien claims.—

1179 (2) (b) A parcel owner is jointly and severally liable with
1180 the previous parcel owner for all unpaid assessments that came
1181 due up to the time of transfer of title, as well as interest,
1182 late charges, and reasonable costs and attorney fees incurred by
1183 the association incident to the collection process. This
1184 liability is without prejudice to any right the present parcel
1185 owner may have to recover any amounts paid by the present owner
1186 from the previous owner. For the purposes of this paragraph, the
1187 term "previous owner" shall not include an association that
1188 acquires title to a delinquent property through foreclosure or
1189 by deed in lieu of foreclosure. The present parcel owner's
1190 liability for unpaid assessments, interest, late charges, and
1191 reasonable costs and attorney fees incurred by the association
1192 incident to the collection process is limited to those amounts
1193 ~~any unpaid assessments~~ that accrued before the association
1194 acquired title to the delinquent property through foreclosure or
1195 by deed in lieu of foreclosure.

1196 Section 20. Section 720.316, Florida Statutes, is created
1197 to read:

1198 720.316 Association emergency powers.—

1199 (1) To the extent allowed by law, unless specifically



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1200 prohibited by the declaration or other recorded governing
1201 documents, and consistent with s. 617.0830, the board of
1202 directors, in response to damage caused by an event for which a
1203 state of emergency is declared pursuant to s. 252.36 in the area
1204 encompassed by the association, may exercise the following
1205 powers:

1206 (a) Conduct board or membership meetings after notice of
1207 the meetings and board decisions is provided in as practicable a
1208 manner as possible, including via publication, radio, United
1209 States mail, the Internet, public service announcements,
1210 conspicuous posting on the association property, or any other
1211 means the board deems appropriate under the circumstances.

1212 (b) Cancel and reschedule an association meeting.

1213 (c) Designate assistant officers who are not directors. If
1214 the executive officer is incapacitated or unavailable, the
1215 assistant officer has the same authority during the state of
1216 emergency as the executive officer he or she assists.

1217 (d) Relocate the association's principal office or
1218 designate an alternative principal office.

1219 (e) Enter into agreements with counties and municipalities
1220 to assist counties and municipalities with debris removal.

1221 (f) Implement a disaster plan before or immediately
1222 following the event for which a state of emergency is declared,
1223 which may include, but is not limited to, turning on or shutting
1224 off elevators; electricity; water, sewer, or security systems;
1225 or air conditioners for association buildings.

1226 (g) Based upon the advice of emergency management officials
1227 or upon the advice of licensed professionals retained by the
1228 board, determine any portion of the association property



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1229 unavailable for entry or occupancy by owners or their family
1230 members, tenants, guests, agents, or invitees to protect their
1231 health, safety, or welfare.

1232 (h) Based upon the advice of emergency management officials
1233 or upon the advice of licensed professionals retained by the
1234 board, determine whether the association property can be safely
1235 inhabited or occupied. However, such determination is not
1236 conclusive as to any determination of habitability pursuant to
1237 the declaration.

1238 (i) Mitigate further damage, including taking action to
1239 contract for the removal of debris and to prevent or mitigate
1240 the spread of fungus, including, mold or mildew, by removing and
1241 disposing of wet drywall, insulation, carpet, cabinetry, or
1242 other fixtures on or within the association property.

1243 (j) Notwithstanding a provision to the contrary, and
1244 regardless of whether such authority does not specifically
1245 appear in the declaration or other recorded governing documents,
1246 levy special assessments without a vote of the owners.

1247 (k) Without owners' approval, borrow money and pledge
1248 association assets as collateral to fund emergency repairs and
1249 carry out the duties of the association if operating funds are
1250 insufficient. This paragraph does not limit the general
1251 authority of the association to borrow money, subject to such
1252 restrictions contained in the declaration or other recorded
1253 governing documents.

1254 (2) The authority granted under subsection (1) is limited
1255 to that time reasonably necessary to protect the health, safety,
1256 and welfare of the association and the parcel owners and their
1257 family members, tenants, guests, agents, or invitees, and to



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1258 mitigate further damage and make emergency repairs.

1259 Section 21. This act shall take effect July 1, 2014.

1260

1261 ===== T I T L E A M E N D M E N T =====

1262 And the title is amended as follows:

1263 Delete everything before the enacting clause

1264 and insert:

1265 A bill to be entitled

1266 An act relating to residential properties; amending s.

1267 509.013, F.S.; replacing reference to timeshare plan

1268 with timeshare project; amending s. 509.032, F.S.;

1269 providing that timeshare projects are not subject to

1270 annual inspection requirements; amending s. 509.221,

1271 F.S.; providing that certain public lodging

1272 establishment requirements do not apply to timeshare

1273 projects; amending s. 509.241, F.S.; providing a

1274 condominium association that does not include any

1275 units classified as a timeshare project is not

1276 required to apply for or receive a public lodging

1277 establishment license; amending s. 509.242, F.S.;

1278 providing a definition of the term "timeshare

1279 project"; deleting the reference to timeshare plans in

1280 the definition of the term "vacation rental"; amending

1281 s. 509.251, F.S.; providing that timeshare projects

1282 within separate buildings or at separate locations but

1283 managed by one licensed agent may be combined in a

1284 single license application; amending s. 712.05, F.S.;

1285 clarifying existing law relating to marketable record

1286 title; amending s. 718.110, F.S.; providing that an



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1287 amendment to a declaration relating to rental
1288 condominium units does not apply to unit owners who
1289 vote against the amendment; amending s. 718.111, F.S.;
1290 providing authority to an association to inspect and
1291 repair abandoned condominium units; providing
1292 conditions to determine if a unit is abandoned;
1293 providing a mechanism for an association to recover
1294 costs associated with maintaining an abandoned unit;
1295 providing that in the absence of an insurable event,
1296 the association or unit owners are responsible for
1297 repairs; providing that an owner may consent in
1298 writing to the disclosure of certain contact
1299 information; requiring an outgoing condominium
1300 association board or committee member to relinquish
1301 all official records and property of the association
1302 within a specified time; providing a civil penalty for
1303 failing to relinquish such records and property;
1304 amending s. 718.112, F.S.; providing that a board or
1305 committee member's participation in a meeting via
1306 real-time videoconferencing, Internet-enabled
1307 videoconferencing, or similar electronic or video
1308 communication counts toward a quorum and that such
1309 member may vote as if physically present; prohibiting
1310 the board from voting via e-mail; amending s. 718.116
1311 F.S.; revising the liabilities of the unit owner and
1312 the previous owner; excluding specified association
1313 from certain liability; limiting the present owner's
1314 liability; amending s. 718.707, F.S.; extending the
1315 date by which a condominium parcel must be acquired in



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1316 order for a person to be classified as a bulk assignee
1317 or bulk buyer; amending s. 719.104, F.S.; providing
1318 that an owner may consent in writing to the disclosure
1319 of certain contact information; requiring an outgoing
1320 cooperative association board or committee member to
1321 relinquish all official records and property of the
1322 association within a specified time; providing a civil
1323 penalty for failing to relinquish such records and
1324 property; providing dates by which financial reports
1325 for an association must be completed; specifying that
1326 members must receive copies of financial reports;
1327 requiring specific types of financial statements for
1328 associations of varying sizes; providing exceptions;
1329 providing a mechanism for waiving or increasing
1330 financial reporting requirements; amending s. 719.106,
1331 F.S.; providing for suspension from office of a
1332 director or officer who is charged with one or more of
1333 certain felony offenses; providing procedures for
1334 filling such vacancy or reinstating such member under
1335 specific circumstances; providing a mechanism for a
1336 person who is convicted of a felony to be eligible for
1337 board membership; amending s. 719.108, F.S.; revising
1338 the liabilities of the unit owner and the previous
1339 unit owner; excluding specified association from
1340 certain liability; limiting the liability of the
1341 present owner; creating s. 719.128, F.S.; providing
1342 emergency powers of a cooperative association;
1343 amending s. 720.303, F.S.; providing that an owner may
1344 consent in writing to the disclosure of certain



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1345 contact information; amending s. 720.306, F.S.;

1346 providing an exception to the need for the association

1347 to provide copies of an amendment to members; amending

1348 s. 720.3085, F.S.; revising the liabilities of the

1349 parcel owner and the previous parcel owner; limiting

1350 the liability of the present parcel owner; creating s.

1351 720.316, F.S.; providing emergency powers of a

1352 homeowners' association; providing an effective date.

By Senator Ring

29-00577C-14

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1 A bill to be entitled
 2 An act relating to real and personal property;
 3 amending s. 712.05, F.S.; clarifying existing law
 4 relating to marketable record title; amending s.
 5 718.110, F.S.; providing that an amendment to a
 6 declaration related to rental condominium units does
 7 not apply to unit owners who vote against the
 8 amendment; amending s. 718.111, F.S.; authorizing an
 9 association to inspect and repair abandoned
 10 condominium units; specifying criteria under which a
 11 unit is presumed abandoned; providing a mechanism for
 12 an association to recover costs associated with
 13 maintaining an abandoned unit; requiring an outgoing
 14 condominium association board or committee member to
 15 relinquish all official records and property of the
 16 association within a specified time; providing a civil
 17 penalty for failing to relinquish such records and
 18 property; amending s. 718.112, F.S.; providing that a
 19 board or committee member's participation in a meeting
 20 via real-time videoconferencing or similar electronic
 21 or video communication counts toward a quorum and that
 22 such member may vote as if physically present;
 23 authorizing the board to communicate via e-mail;
 24 prohibiting the board from voting via e-mail; amending
 25 s. 718.116, F.S.; expanding costs that a unit owner is
 26 jointly and severally responsible for paying with the
 27 previous owner; providing that the term "previous
 28 owner" does not include certain associations; limiting
 29 the unit owner's liability for specified costs to

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30 amounts accrued before the association acquired title
 31 to the delinquent property; amending s. 718.707, F.S.;
 32 extending the date by which a parcel must be acquired
 33 in order for a person to be classified as a bulk
 34 assignee or bulk buyer; amending s. 719.104, F.S.;
 35 requiring an outgoing cooperative association board or
 36 committee member to relinquish all official records
 37 and property of the association within a specified
 38 time; providing a civil penalty for failing to
 39 relinquish such records and property; providing dates
 40 by which financial reports for an association must be
 41 completed; specifying that members must receive copies
 42 of financial reports; requiring specific types of
 43 financial statements for associations of varying
 44 sizes; providing exceptions; providing a mechanism for
 45 waiving or increasing financial reporting
 46 requirements; amending s. 719.106, F.S.; providing
 47 that certain persons are ineligible for board
 48 membership; suspending a director or officer from
 49 office if he or she is charged with a specified
 50 felony; providing procedures for filling such vacancy
 51 or for reinstating a member under certain
 52 circumstances; providing a mechanism to allow a person
 53 convicted of a felony to be eligible for board
 54 membership; requiring the notice of a board meeting to
 55 specify all agenda items; requiring the board to place
 56 an item on the agenda if a specified number of voting
 57 interests petition the board; amending s. 719.108,
 58 F.S.; expanding costs that a unit owner is jointly and

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59 severally responsible for paying with the previous
 60 owner; providing that the term "previous owner" does
 61 not include certain associations; limiting the unit
 62 owner's liability for specified costs to amounts
 63 accrued before the association acquired title to the
 64 delinquent property; creating s. 719.128, F.S.;

65 providing emergency powers of a cooperative
 66 association; amending s. 720.3085, F.S.; expanding
 67 costs that a parcel owner is jointly and severally
 68 responsible for paying with the previous owner;
 69 limiting the parcel owner's liability for specified
 70 costs to amounts accrued before the association
 71 acquired title to the delinquent property; creating s.
 72 720.316, F.S.; providing emergency powers of a
 73 homeowners' association; providing an effective date.

74
 75 Be It Enacted by the Legislature of the State of Florida:

76
 77 Section 1. Subsection (1) of section 712.05, Florida
 78 Statutes, is amended to read:

79 712.05 Effect of filing notice.—

80 (1) A ~~Any~~ person claiming an interest in land or a
 81 homeowners' association desiring to preserve a ~~any~~ covenant or
 82 restriction may preserve and protect the same from
 83 extinguishment by the operation of this act by filing for
 84 record, during the 30-year period immediately following the
 85 effective date of the root of title, a written notice, ~~in~~
 86 writing, in accordance with this chapter. ~~Such the provisions~~
 87 ~~hereof, which notice preserves shall have the effect of so~~

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88 ~~preserving~~ such claim of right or such covenant or restriction
 89 or portion of such covenant or restriction for up to a period of
 90 ~~not longer than~~ 30 years after filing the ~~notice same~~ unless the
 91 notice is filed again ~~filed~~ as required in this chapter ~~herein~~.
 92 A person's ~~No~~ disability or lack of knowledge of any kind may
 93 ~~not on the part of anyone shall~~ delay the commencement of or
 94 suspend the running of the said 30-year period. Such notice may
 95 be filed for record by the claimant or by any other person
 96 acting on behalf of a ~~any~~ claimant who is:

97 (a) Under a disability;~~;~~

98 (b) Unable to assert a claim on his or her behalf;~~;~~ or

99 (c) One of a class, but whose identity cannot be
 100 established or is uncertain at the time of filing such notice of
 101 claim for record.

102
 103 Such notice may be filed by a homeowners' association only if
 104 the preservation of such covenant or restriction or portion of
 105 such covenant or restriction is approved by at least two-thirds
 106 of the members of the board of directors of an incorporated
 107 homeowners' association at a meeting for which a notice, stating
 108 the meeting's time and place and containing the statement of
 109 marketable title action described in s. 712.06(1)(b), was mailed
 110 or hand delivered to members of the homeowners' association at
 111 least not less than 7 days before ~~prior to~~ such meeting. The
 112 homeowners' association or clerk of the circuit court is not
 113 required to provide notice other than as provided under s.
 114 712.06(3). The preceding sentence is intended to clarify
 115 existing law.

116 Section 2. Subsection (13) of section 718.110, Florida

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117 Statutes, is amended to read:

118 718.110 Amendment of declaration; correction of error or
119 omission in declaration by circuit court.—

120 (13) An amendment that prohibits ~~prohibiting~~ unit owners
121 from renting their units or altering the duration of the rental
122 term or that specifies or limits ~~specifying or limiting~~ the
123 number of times unit owners are entitled to rent their units
124 during a specified period does not apply ~~applies only~~ to unit
125 owners who voted against ~~consent to~~ the amendment. However, such
126 amendment applies to unit owners who consented to the amendment,
127 who failed to cast a vote, or and unit owners who acquired
128 acquire title to their units after the effective date of the
129 ~~that~~ amendment.

130 Section 3. Subsection (5) of section 718.111, Florida
131 Statutes, is amended, and paragraph (f) is added to subsection
132 (12) of that section, to read:

133 718.111 The association.—

134 (5) (a) RIGHT OF ACCESS TO UNITS.—The association has the
135 irrevocable right of access to each unit during reasonable
136 hours, when necessary for the maintenance, repair, or
137 replacement of any common elements or of any portion of a unit
138 to be maintained by the association pursuant to the declaration
139 or as necessary to prevent damage to the common elements or to a
140 unit or units.

141 (b)1. Notwithstanding paragraph (a), and regardless of
142 whether authority is provided in the declaration or other
143 recorded governing documents, an association, at the sole
144 discretion of the board, may enter an abandoned unit to inspect
145 the unit and adjoining common elements; make repairs to the unit

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146 or to the common elements serving the unit, as needed; repair
147 the unit if mold or deterioration is present; turn on the power
148 for the unit; or otherwise maintain, preserve, or protect the
149 unit and adjoining common elements. For purposes of this
150 paragraph, a unit is presumed to be abandoned if:

151 a. The unit is the subject of a foreclosure action and no
152 tenant appears to have resided in the unit for at least 4
153 continuous weeks without prior written notice to the
154 association; or

155 b. No tenant appears to have resided in the unit for 2
156 consecutive months without prior written notice to the
157 association, and the association is unable to contact the owner
158 or determine the whereabouts of the owner after reasonable
159 inquiry.

160 2. Except in the case of an emergency, an association may
161 not enter an abandoned unit until 48 hours after notice of the
162 association's intent to enter the unit has been delivered to the
163 owner at the address of the owner as reflected in the records of
164 the association.

165 3. Any expense incurred by an association pursuant to this
166 paragraph is chargeable to the unit owner and enforceable as an
167 assessment pursuant to s. 718.116, and the association may use
168 its lien authority provided under s. 718.116 to enforce
169 collection of the expense.

170 4. The association may petition a court of competent
171 jurisdiction to appoint a receiver and may lease out an
172 abandoned unit for the benefit of the association to offset
173 against the rental income, the association's costs and expenses
174 of maintaining, preserving, and protecting the unit and the

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175 adjoining common elements, including the costs of the
 176 receivership and all unpaid assessments, interest,
 177 administrative late fees, costs, and reasonable attorney fees.

178 (12) OFFICIAL RECORDS.—

179 (f) An outgoing board or committee member must relinquish
 180 all official records and property of the association in his or
 181 her possession or under his or her control to the incoming board
 182 within 5 days after the election. An outgoing board or committee
 183 member who fails to relinquish such records and property is
 184 personally subject to a civil penalty pursuant to s.
 185 718.501(1)(d).

186 Section 4. Paragraphs (b) and (c) of subsection (2) of
 187 section 718.112, Florida Statutes, are amended to read:

188 718.112 Bylaws.—

189 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
 190 following and, if they do not do so, shall be deemed to include
 191 the following:

192 (b) *Quorum; voting requirements; proxies.*—

193 1. Unless a lower number is provided in the bylaws, the
 194 percentage of voting interests required to constitute a quorum
 195 at a meeting of the members is a majority of the voting
 196 interests. Unless otherwise provided in this chapter or in the
 197 declaration, articles of incorporation, or bylaws, and except as
 198 provided in subparagraph (d)4., decisions shall be made by a
 199 majority of the voting interests represented at a meeting at
 200 which a quorum is present.

201 2. Except as specifically otherwise provided herein, unit
 202 owners may not vote by general proxy, but may vote by limited
 203 proxies substantially conforming to a limited proxy form adopted

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204 by the division. A voting interest or consent right allocated to
 205 a unit owned by the association may not be exercised or
 206 considered for any purpose, whether for a quorum, an election,
 207 or otherwise. Limited proxies and general proxies may be used to
 208 establish a quorum. Limited proxies shall be used for votes
 209 taken to waive or reduce reserves in accordance with
 210 subparagraph (f)2.; for votes taken to waive the financial
 211 reporting requirements of s. 718.111(13); for votes taken to
 212 amend the declaration pursuant to s. 718.110; for votes taken to
 213 amend the articles of incorporation or bylaws pursuant to this
 214 section; and for any other matter for which this chapter
 215 requires or permits a vote of the unit owners. Except as
 216 provided in paragraph (d), a proxy, limited or general, may not
 217 be used in the election of board members. General proxies may be
 218 used for other matters for which limited proxies are not
 219 required, and may be used in voting for nonsubstantive changes
 220 to items for which a limited proxy is required and given.
 221 Notwithstanding this subparagraph, unit owners may vote in
 222 person at unit owner meetings. This subparagraph does not limit
 223 the use of general proxies or require the use of limited proxies
 224 for any agenda item or election at any meeting of a timeshare
 225 condominium association.

226 3. Any proxy given is effective only for the specific
 227 meeting for which originally given and any lawfully adjourned
 228 meetings thereof. A proxy is not valid longer than 90 days after
 229 the date of the first meeting for which it was given and may be
 230 revoked. ~~Every proxy is revocable~~ at any time at the pleasure of
 231 the unit owner executing it.

232 4. A member of the board of administration or a committee

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233 may submit in writing his or her agreement or disagreement with
 234 any action taken at a meeting that the member did not attend.
 235 This agreement or disagreement may not be used as a vote for or
 236 against the action taken or to create a quorum.

237 5. ~~A~~ ~~if any of the~~ board or committee member's
 238 participation in a meeting via telephone, real-time
 239 videoconferencing, or similar real-time electronic or video
 240 communication counts toward a quorum, and such member may vote
 241 as if physically present ~~members meet by telephone conference,~~
 242 ~~those board or committee members may be counted toward obtaining~~
 243 ~~a quorum and may vote by telephone.~~ A telephone speaker must be
 244 used so that the conversation of such ~~those~~ members may be heard
 245 by the board or committee members attending in person as well as
 246 by any unit owners present at a meeting.

247 (c) *Board of administration meetings.*—Meetings of the board
 248 of administration at which a quorum of the members is present
 249 are open to all unit owners. A member may use e-mail as a means
 250 of communication but may not cast a vote on an association
 251 matter via e-mail. A unit owner may tape record or videotape the
 252 meetings. The right to attend such meetings includes the right
 253 to speak at such meetings with reference to all designated
 254 agenda items. The division shall adopt reasonable rules
 255 governing the tape recording and videotaping of the meeting. The
 256 association may adopt written reasonable rules governing the
 257 frequency, duration, and manner of unit owner statements.

258 1. Adequate notice of all board meetings, which must
 259 specifically identify all agenda items, must be posted
 260 conspicuously on the condominium property at least 48 continuous
 261 hours before the meeting except in an emergency. If 20 percent

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262 of the voting interests petition the board to address an item of
 263 business, the board, within 60 days after receipt of the
 264 petition, shall place the item on the agenda at its next regular
 265 board meeting or at a special meeting called for that purpose ~~of~~
 266 ~~the board, but not later than 60 days after the receipt of the~~
 267 ~~petition, shall place the item on the agenda.~~ An Any item not
 268 included on the notice may be taken up on an emergency basis by
 269 a vote of at least a majority plus one of the board members.
 270 Such emergency action must be noticed and ratified at the next
 271 regular board meeting. However, written notice of a any meeting
 272 at which a nonemergency special assessment ~~assessments,~~ or an at
 273 ~~which~~ amendment to rules regarding unit use, will be considered
 274 must be mailed, delivered, or electronically transmitted to the
 275 unit owners and posted conspicuously on the condominium property
 276 at least 14 days before the meeting. Evidence of compliance with
 277 this 14-day notice requirement must be made by an affidavit
 278 executed by the person providing the notice and filed with the
 279 official records of the association. Upon notice to the unit
 280 owners, the board shall, by duly adopted rule, designate a
 281 specific location on the condominium or association property
 282 where all notices of board meetings must ~~are to~~ be posted. If
 283 there is no condominium property or association property where
 284 notices can be posted, notices shall be mailed, delivered, or
 285 electronically transmitted to each unit owner at least 14 days
 286 before the meeting ~~to the owner of each unit.~~ In lieu of or in
 287 addition to the physical posting of the notice on the
 288 condominium property, the association may, by reasonable rule,
 289 adopt a procedure for conspicuously posting and repeatedly
 290 broadcasting the notice and the agenda on a closed-circuit cable

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291 television system serving the condominium association. However,
 292 if broadcast notice is used in lieu of a notice physically
 293 posted on condominium property, the notice and agenda must be
 294 broadcast at least four times every broadcast hour of each day
 295 that a posted notice is otherwise required under this section.
 296 If broadcast notice is provided, the notice and agenda must be
 297 broadcast in a manner and for a sufficient continuous length of
 298 time so as to allow an average reader to observe the notice and
 299 read and comprehend the entire content of the notice and the
 300 agenda. Notice of any meeting in which regular or special
 301 assessments against unit owners are to be considered ~~for any~~
 302 ~~reason~~ must specifically state that assessments will be
 303 considered and provide the nature, estimated cost, and
 304 description of the purposes for such assessments.

305 2. Meetings of a committee to take final action on behalf
 306 of the board or make recommendations to the board regarding the
 307 association budget are subject to this paragraph. Meetings of a
 308 committee that does not take final action on behalf of the board
 309 or make recommendations to the board regarding the association
 310 budget are subject to this section, unless those meetings are
 311 exempted from this section by the bylaws of the association.

312 3. Notwithstanding any other law, the requirement that
 313 board meetings and committee meetings be open to the unit owners
 314 does not apply to:

315 a. Meetings between the board or a committee and the
 316 association's attorney, with respect to proposed or pending
 317 litigation, if the meeting is held for the purpose of seeking or
 318 rendering legal advice; or

319 b. Board meetings held for the purpose of discussing

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320 personnel matters.

321 Section 5. Paragraph (a) of subsection (1) of section
 322 718.116, Florida Statutes, is amended to read:

323 718.116 Assessments; liability; lien and priority;
 324 interest; collection.-

325 (1) (a) A unit owner, regardless of how his or her title has
 326 been acquired, including by purchase at a foreclosure sale or by
 327 deed in lieu of foreclosure, is liable for all assessments that
 328 ~~which~~ come due while he or she is the unit owner. Additionally,
 329 a unit owner is jointly and severally liable with the previous
 330 owner for all unpaid assessments that came due up to the time of
 331 transfer of title, as well as interest, late charges, and
 332 reasonable costs and attorney fees incurred by the association
 333 incident to the collection process. This liability is without
 334 prejudice to any right the owner may have to recover from the
 335 previous owner the amounts paid by the owner. For the purposes
 336 of this paragraph, the term "previous owner" does not include an
 337 association that acquires title to a delinquent property through
 338 foreclosure or by deed in lieu of foreclosure. The present unit
 339 owner's liability for unpaid assessments, interest, late
 340 charges, and reasonable costs and attorney fees incurred by the
 341 association incident to the collection process is limited to the
 342 amounts that accrued before the association acquired title to
 343 the delinquent property through foreclosure or by deed in lieu
 344 of foreclosure.

345 Section 6. Section 718.707, Florida Statutes, is amended to
 346 read:

347 718.707 Time limitation for classification as bulk assignee
 348 or bulk buyer.-A person acquiring condominium parcels may not be

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349 classified as a bulk assignee or bulk buyer unless the
 350 condominium parcels were acquired on or after July 1, 2010, but
 351 before July 1, 2016 ~~2015~~. The date of such acquisition shall be
 352 determined by the date of recording a deed or other instrument
 353 of conveyance for such parcels in the public records of the
 354 county in which the condominium is located, or by the date of
 355 issuing a certificate of title in a foreclosure proceeding with
 356 respect to such condominium parcels.

357 Section 7. Paragraph (e) is added to subsection (2) of
 358 section 719.104, Florida Statutes, and subsection (4) of that
 359 section is amended, to read:

360 719.104 Cooperatives; access to units; records; financial
 361 reports; assessments; purchase of leases.—

362 (2) OFFICIAL RECORDS.—

363 (e) An outgoing board or committee member must relinquish
 364 all official records and property of the association in his or
 365 her possession or under his or her control to the incoming board
 366 within 5 days after the election. The Division of Florida
 367 Condominiums, Timeshares, and Mobile Homes shall impose a civil
 368 penalty as set forth in s. 719.501(1)(d) against an outgoing
 369 board or committee member who willfully and knowingly fails to
 370 relinquish such records and property.

371 (4) FINANCIAL REPORT.—

372 (a) Within 90 ~~60~~ days after following the end of the fiscal
 373 or calendar year or annually on such date as ~~is otherwise~~
 374 provided in the bylaws of the association, the board of
 375 administration ~~of the association~~ shall prepare and complete, or
 376 contract with a third party to prepare and complete, a financial
 377 report covering the preceding fiscal or calendar year. Within 21

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378 days after the financial report is completed by the association
 379 or received from the third party, but no later than 120 days
 380 after the end of the fiscal year, calendar year, or other date
 381 provided in the bylaws, the association shall provide each
 382 member with a copy of the annual financial report or a written
 383 notice that a copy of the financial report is available upon
 384 request at no charge to the member. The division shall adopt
 385 rules setting forth uniform accounting principles, standards,
 386 and reporting requirements ~~mail or furnish by personal delivery~~
 387 ~~to each unit owner a complete financial report of actual~~
 388 ~~receipts and expenditures for the previous 12 months, or a~~
 389 ~~complete set of financial statements for the preceding fiscal~~
 390 ~~year prepared in accordance with generally accepted accounting~~
 391 ~~procedures. The report shall show the amounts of receipts by~~
 392 ~~accounts and receipt classifications and shall show the amounts~~
 393 ~~of expenses by accounts and expense classifications including,~~
 394 ~~if applicable, but not limited to, the following:~~

- 395 ~~1. Costs for security;~~
- 396 ~~2. Professional and management fees and expenses;~~
- 397 ~~3. Taxes;~~
- 398 ~~4. Costs for recreation facilities;~~
- 399 ~~5. Expenses for refuse collection and utility services;~~
- 400 ~~6. Expenses for lawn care;~~
- 401 ~~7. Costs for building maintenance and repair;~~
- 402 ~~8. Insurance costs;~~
- 403 ~~9. Administrative and salary expenses; and~~
- 404 ~~10. Reserves for capital expenditures, deferred~~
 405 ~~maintenance, and any other category for which the association~~
 406 ~~maintains a reserve account or accounts.~~

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407 (b) Except as set forth in paragraph (c), an association
 408 whose total annual revenues meet the criteria of this paragraph
 409 shall prepare or cause to be prepared a complete set of
 410 financial statements according to the generally accepted
 411 accounting principles adopted by the Board of Accountancy. The
 412 financial statements shall be as follows:

413 1. An association with total annual revenues of between
 414 \$150,000 and \$299,999 shall prepare a compiled financial
 415 statement.

416 2. An association with total annual revenues of between
 417 \$300,000 and \$499,999 shall prepare a reviewed financial
 418 statement.

419 3. An association with total annual revenues of \$500,000 or
 420 more shall prepare an audited financial statement. The division
 421 shall adopt rules that may require that the association deliver
 422 to the unit owners, in lieu of the financial report required by
 423 this section, a complete set of financial statements for the
 424 preceding fiscal year. The financial statements shall be
 425 delivered within 90 days following the end of the previous
 426 fiscal year or annually on such other date as provided in the
 427 bylaws. The rules of the division may require that the financial
 428 statements be compiled, reviewed, or audited, and the rules
 429 shall take into consideration the criteria set forth in s.
 430 719.501(1)(j).

431 4. The requirement to have the financial statements
 432 compiled, reviewed, or audited does not apply to an association
 433 associations if a majority of the voting interests of the
 434 association present at a duly called meeting of the association
 435 have voted determined for a fiscal year to waive this

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436 requirement for the fiscal year. In an association in which
 437 turnover of control by the developer has not occurred, the
 438 developer may vote to waive the audit requirement for the first
 439 2 years of ~~the~~ operation of the association, after which time
 440 waiver of an applicable audit requirement shall be by a majority
 441 of voting interests other than the developer. The meeting shall
 442 be held before ~~prior to~~ the end of the fiscal year, and the
 443 waiver ~~may shall~~ be effective for only one fiscal year. An
 444 association may not waive the financial reporting requirements
 445 of this section for more than 3 consecutive years. This
 446 subsection does not apply to a cooperative that consists of 50
 447 or fewer units.

448 (c)1. An association with total annual revenues of less
 449 than \$150,000 shall prepare a report of cash receipts and
 450 expenditures.

451 2. An association in a community of fewer than 50 units,
 452 regardless of the association's annual revenues, shall prepare a
 453 report of cash receipts and expenditures in lieu of the
 454 financial statements required in paragraph (b) unless the
 455 declaration or other recorded governing documents provide
 456 otherwise.

457 3. A report of cash receipts and disbursements must
 458 disclose the amount of receipts by accounts and receipt
 459 classifications and the amount of expenses by accounts and
 460 expense classifications, including, as applicable, security,
 461 professional, and management fees and expenses; taxes; costs for
 462 recreation facilities; expenses for refuse collection and
 463 utility services; expenses for lawn care; costs of building
 464 maintenance and repair; insurance costs; administration and

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465 salary expenses; and reserves, if maintained by the association.

466 (d) If at least 20 percent of the unit owners petition the
 467 board for a greater level of financial reporting than that
 468 required under this section, the association shall duly notice
 469 and hold a meeting of members within 30 days after receipt of
 470 the petition to vote on raising the level of reporting for that
 471 fiscal year. Upon approval of a majority of the voting interests
 472 represented at a meeting at which a quorum of unit owners is
 473 present, the association shall prepare an amended budget or
 474 shall adopt a special assessment to pay for the financial report
 475 regardless of any provision to the contrary in the declaration
 476 or other recorded governing documents. In addition, the
 477 association shall provide within 90 days of the meeting or the
 478 end of the fiscal year, whichever occurs later:

479 1. Compiled, reviewed, or audited financial statements, if
 480 the association is otherwise required to prepare a report of
 481 cash receipts and expenditures;

482 2. Reviewed or audited financial statements, if the
 483 association is otherwise required to prepare compiled financial
 484 statements; or

485 3. Audited financial statements if the association is
 486 otherwise required to prepare reviewed financial statements.

487 (e) If approved by a majority of the voting interests
 488 present at a properly called meeting of the association, an
 489 association may prepare or cause to be prepared:

490 1. A report of cash receipts and expenditures in lieu of a
 491 compiled, reviewed, or audited financial statement;

492 2. A report of cash receipts and expenditures or a compiled
 493 financial statement in lieu of a reviewed or audited financial

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494 statement; or

495 3. A report of cash receipts and expenditures, a compiled
 496 financial statement, or a reviewed financial statement in lieu
 497 of an audited financial statement.

498 Section 8. Paragraphs (a), (c), and (d) of subsection (1)
 499 of section 719.106, Florida Statutes, are amended to read:

500 719.106 Bylaws; cooperative ownership.—

501 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
 502 documents shall provide for the following, and if they do not,
 503 they shall be deemed to include the following:

504 (a) *Administration.*—

505 1. The form of administration of the association shall be
 506 described, indicating the titles of the officers and board of
 507 administration and specifying the powers, duties, manner of
 508 selection and removal, and compensation, if any, of officers and
 509 board members. In the absence of such a provision, the board of
 510 administration shall be composed of five members, except that in
 511 the case of cooperatives having five or fewer units, in which
 512 case in not-for-profit corporations, the board shall consist of
 513 at least ~~not fewer than~~ three members. In the absence of
 514 provisions to the contrary, the board of administration shall
 515 have a president, a secretary, and a treasurer, who shall
 516 perform the duties of those offices customarily performed by
 517 officers of corporations. Unless prohibited in the bylaws, the
 518 board of administration may appoint other officers and grant
 519 them those duties it deems appropriate. Unless otherwise
 520 provided in the bylaws, the officers shall serve without
 521 compensation and at the pleasure of the board. Unless otherwise
 522 provided in the bylaws, the members of the board shall serve

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523 without compensation.

524 2. A person who has been suspended or removed by the
 525 division under this chapter, or who is delinquent in the payment
 526 of any monetary obligation due the association, is not eligible
 527 to be a candidate for board membership and may not be listed on
 528 the ballot. A director or officer charged by information or
 529 indictment with a felony theft or embezzlement offense involving
 530 the association's funds or property is suspended from office.
 531 The board shall fill the vacancy according to general law until
 532 the end of the period of the suspension or the end of the
 533 director's term of office, whichever occurs first. However, if
 534 the charges are resolved without a finding of guilt or without
 535 acceptance of a plea of guilty or nolo contendere, the director
 536 or officer shall be reinstated for any remainder of his or her
 537 term of office. A member who has such criminal charges pending
 538 may not be appointed or elected to a position as a director or
 539 officer. A person who has been convicted of any felony in this
 540 state or in a United States District or Territorial Court, or
 541 who has been convicted of any offense in another jurisdiction
 542 which would be considered a felony if committed in this state,
 543 is not eligible for board membership unless such felon's civil
 544 rights have been restored for at least 5 years as of the date
 545 such person seeks election to the board. The validity of an
 546 action by the board is not affected if it is later determined
 547 that a board member is ineligible for board membership due to
 548 having been convicted of a felony.

549 ~~3.2-~~ When a unit owner files a written inquiry by certified
 550 mail with the board of administration, the board shall respond
 551 in writing to the unit owner within 30 days of receipt of the

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552 inquiry. The board's response shall ~~either~~ give a substantive
 553 response to the inquirer, notify the inquirer that a legal
 554 opinion has been requested, or notify the inquirer that advice
 555 has been requested from the division. If the board requests
 556 advice from the division, the board shall, within 10 days after
 557 ~~of~~ its receipt of the advice, provide in writing a substantive
 558 response to the inquirer. If a legal opinion is requested, the
 559 board shall, within 60 days after the receipt of the inquiry,
 560 provide in writing a substantive response to the inquirer. The
 561 failure to provide a substantive response to the inquirer as
 562 provided herein precludes the board from recovering attorney
 563 ~~attorney's~~ fees and costs in any subsequent litigation,
 564 administrative proceeding, or arbitration arising out of the
 565 inquiry. The association may, through its board of
 566 administration, adopt reasonable rules and regulations regarding
 567 the frequency and manner of responding to the unit owners'
 568 inquiries, one of which may be that the association is obligated
 569 to respond to only one written inquiry per unit in any given 30-
 570 day period. In such case, any additional ~~inquiry or~~ inquiries
 571 must be responded to in the subsequent 30-day period, or
 572 periods, as applicable.

573 (c) *Board of administration meetings.*—Meetings of the board
 574 of administration at which a quorum of the members is present
 575 ~~must shall~~ be open to all unit owners. Any unit owner may tape
 576 record or videotape meetings of the board of administration. The
 577 right to attend such meetings includes the right to speak at
 578 such meetings with reference to all designated agenda items. The
 579 division shall adopt reasonable rules governing the tape
 580 recording and videotaping of the meeting. The association may

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581 adopt reasonable written rules governing the frequency,
 582 duration, and manner of unit owner statements. Adequate notice
 583 of all board meetings, which notice must specifically identify
 584 all agenda items, shall be posted in a conspicuous place upon
 585 the cooperative property at least 48 continuous hours preceding
 586 the meeting, except in an emergency. If 20 percent of the voting
 587 interests petition the board to address an item of business, the
 588 board shall place the item on the agenda at its next regular
 589 board meeting or at a special meeting of the board, but no later
 590 than 60 days after the petition is received. Any item not
 591 included on the notice may be taken up on an emergency basis by
 592 at least a majority plus one of the members of the board. Such
 593 emergency action shall be noticed and ratified at the next
 594 regular meeting of the board. However, written notice of any
 595 meeting at which nonemergency special assessments, or at which
 596 amendment to rules regarding unit use, will be considered shall
 597 be mailed, delivered, or electronically transmitted to the unit
 598 owners and posted conspicuously on the cooperative property at
 599 least not less than 14 days before the meeting. Evidence of
 600 compliance with this 14-day notice shall be made by an affidavit
 601 executed by the person providing the notice and filed among the
 602 official records of the association. Upon notice to the unit
 603 owners, the board shall by duly adopted rule designate a
 604 specific location on the cooperative property upon which all
 605 notices of board meetings shall be posted. In lieu of or in
 606 addition to the physical posting of notice of any meeting of the
 607 board of administration on the cooperative property, the
 608 association may, by reasonable rule, adopt a procedure for
 609 conspicuously posting and repeatedly broadcasting the notice and

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610 the agenda on a closed-circuit cable television system serving
 611 the cooperative association. However, if broadcast notice is
 612 used in lieu of a notice posted physically on the cooperative
 613 property, the notice and agenda must be broadcast at least four
 614 times every broadcast hour of each day that a posted notice is
 615 otherwise required under this section. When broadcast notice is
 616 provided, the notice and agenda must be broadcast in a manner
 617 and for a sufficient continuous length of time so as to allow an
 618 average reader to observe the notice and read and comprehend the
 619 entire content of the notice and the agenda. Notice of any
 620 meeting in which regular assessments against unit owners are to
 621 be considered for any reason shall specifically contain a
 622 statement that assessments will be considered and the nature of
 623 any such assessments. Meetings of a committee to take final
 624 action on behalf of the board or to make recommendations to the
 625 board regarding the association budget are subject to ~~the~~
 626 ~~provisions of~~ this paragraph. Meetings of a committee that does
 627 not take final action on behalf of the board or make
 628 recommendations to the board regarding the association budget
 629 are subject to ~~the provisions of~~ this section, unless those
 630 meetings are exempted from this section by the bylaws of the
 631 association. Notwithstanding any ~~other~~ law to the contrary, the
 632 requirement that board meetings and committee meetings be open
 633 to the unit owners does not apply to board or committee meetings
 634 held for the purpose of discussing personnel matters or meetings
 635 between the board or a committee and the association's attorney,
 636 with respect to proposed or pending litigation, if the meeting
 637 is held for the purpose of seeking or rendering legal advice.
 638 (d) *Shareholder meetings.*—There shall be an annual meeting

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639 of the shareholders. All members of the board of administration
 640 shall be elected at the annual meeting unless the bylaws provide
 641 for staggered election terms or for their election at another
 642 meeting. Any unit owner desiring to be a candidate for board
 643 membership must comply with subparagraph 1. The bylaws must
 644 provide the method for calling meetings, including annual
 645 meetings. Written notice, which must incorporate an
 646 identification of agenda items, shall be given to each unit
 647 owner at least 14 days before the annual meeting and posted in a
 648 conspicuous place on the cooperative property at least 14
 649 continuous days preceding the annual meeting. Upon notice to the
 650 unit owners, the board must by duly adopted rule designate a
 651 specific location on the cooperative property upon which all
 652 notice of unit owner meetings are posted. In lieu of or in
 653 addition to the physical posting of the meeting notice, the
 654 association may, by reasonable rule, adopt a procedure for
 655 conspicuously posting and repeatedly broadcasting the notice and
 656 the agenda on a closed-circuit cable television system serving
 657 the cooperative association. However, if broadcast notice is
 658 used in lieu of a posted notice, the notice and agenda must be
 659 broadcast at least four times every broadcast hour of each day
 660 that a posted notice is otherwise required under this section.
 661 If broadcast notice is provided, the notice and agenda must be
 662 broadcast in a manner and for a sufficient continuous length of
 663 time to allow an average reader to observe the notice and read
 664 and comprehend the entire content of the notice and the agenda.
 665 Unless a unit owner waives in writing the right to receive
 666 notice of the annual meeting, the notice of the annual meeting
 667 must be sent by mail, hand delivered, or electronically

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668 transmitted to each unit owner. An officer of the association
 669 must provide an affidavit or United States Postal Service
 670 certificate of mailing, to be included in the official records
 671 of the association, affirming that notices of the association
 672 meeting were mailed, hand delivered, or electronically
 673 transmitted, in accordance with this provision, to each unit
 674 owner at the address last furnished to the association.

675 1. The board of administration shall be elected by written
 676 ballot or voting machine. A proxy may not be used in electing
 677 the board of administration in general elections or elections to
 678 fill vacancies caused by recall, resignation, or otherwise
 679 unless otherwise provided in this chapter.

680 a. At least 60 days before a scheduled election, the
 681 association shall mail, deliver, or transmit, whether by
 682 separate association mailing, delivery, or electronic
 683 transmission or included in another association mailing,
 684 delivery, or electronic transmission, including regularly
 685 published newsletters, to each unit owner entitled to vote, a
 686 first notice of the date of the election. Any unit owner or
 687 other eligible person desiring to be a candidate for the board
 688 of administration must give written notice to the association at
 689 least 40 days before a scheduled election. Together with the
 690 written notice and agenda as set forth in this section, the
 691 association shall mail, deliver, or electronically transmit a
 692 second notice of election to all unit owners entitled to vote,
 693 together with a ballot that lists all candidates. Upon request
 694 of a candidate, the association shall include an information
 695 sheet, no larger than 8 1/2 inches by 11 inches, which must be
 696 furnished by the candidate at least 35 days before the election,

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697 to be included with the mailing, delivery, or electronic
 698 transmission of the ballot, with the costs of mailing, delivery,
 699 or transmission and copying to be borne by the association. The
 700 association is not liable for the contents of the information
 701 sheets provided by the candidates. In order to reduce costs, the
 702 association may print or duplicate the information sheets on
 703 both sides of the paper. The division shall by rule establish
 704 voting procedures consistent with this subparagraph, including
 705 rules establishing procedures for giving notice by electronic
 706 transmission and rules providing for the secrecy of ballots.
 707 Elections shall be decided by a plurality of those ballots cast.
 708 There is no quorum requirement. However, at least 20 percent of
 709 the eligible voters must cast a ballot in order to have a valid
 710 election. A unit owner may not permit any other person to vote
 711 his or her ballot, and any such ballots improperly cast are
 712 invalid. A unit owner who needs assistance in casting the ballot
 713 for the reasons stated in s. 101.051 may obtain assistance in
 714 casting the ballot. Any unit owner violating this provision may
 715 be fined by the association in accordance with s. 719.303. The
 716 regular election must occur on the date of the annual meeting.
 717 This subparagraph does not apply to timeshare cooperatives.
 718 Notwithstanding this subparagraph, an election and balloting are
 719 not required unless more candidates file a notice of intent to
 720 run or are nominated than vacancies exist on the board. Any
 721 challenge to the election process must be commenced within 60
 722 days after the election results are announced.

723 b. Within 90 days after being elected or appointed to the
 724 board, each new director shall certify in writing to the
 725 secretary of the association that he or she has read the

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726 association's bylaws, articles of incorporation, proprietary
 727 lease, and current written policies; that he or she will work to
 728 uphold such documents and policies to the best of his or her
 729 ability; and that he or she will faithfully discharge his or her
 730 fiduciary responsibility to the association's members. Within 90
 731 days after being elected or appointed to the board, in lieu of
 732 this written certification, the newly elected or appointed
 733 director may submit a certificate of having satisfactorily
 734 completed the educational curriculum administered by an
 735 education provider as approved by the division pursuant to the
 736 requirements established in chapter 718 within 1 year before or
 737 90 days after the date of election or appointment. The
 738 educational certificate is valid and does not have to be
 739 resubmitted as long as the director serves on the board without
 740 interruption. A director who fails to timely file the written
 741 certification or educational certificate is suspended from
 742 service on the board until he or she complies with this sub-
 743 subparagraph. The board may temporarily fill the vacancy during
 744 the period of suspension. The secretary of the association shall
 745 cause the association to retain a director's written
 746 certification or educational certificate for inspection by the
 747 members for 5 years after a director's election or the duration
 748 of the director's uninterrupted tenure, whichever is longer.
 749 Failure to have such written certification or educational
 750 certificate on file does not affect the validity of any board
 751 action.

752 2. Any approval by unit owners called for by this chapter,
 753 or the applicable cooperative documents, must be made at a duly
 754 noticed meeting of unit owners and is subject to this chapter or

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755 the applicable cooperative documents relating to unit owner
 756 decisionmaking, except that unit owners may take action by
 757 written agreement, without meetings, on matters for which action
 758 by written agreement without meetings is expressly allowed by
 759 the applicable cooperative documents or law that ~~which~~ provides
 760 for the unit owner action.

761 3. Unit owners may waive notice of specific meetings if
 762 allowed by the applicable cooperative documents or law. If
 763 authorized by the bylaws, notice of meetings of the board of
 764 administration, shareholder meetings, except shareholder
 765 meetings called to recall board members under paragraph (f), and
 766 committee meetings may be given by electronic transmission to
 767 unit owners who consent to receive notice by electronic
 768 transmission.

769 4. Unit owners have the right to participate in meetings of
 770 unit owners with reference to all designated agenda items.
 771 However, the association may adopt reasonable rules governing
 772 the frequency, duration, and manner of unit owner participation.

773 5. Any unit owner may tape record or videotape meetings of
 774 the unit owners subject to reasonable rules adopted by the
 775 division.

776 6. Unless otherwise provided in the bylaws, a vacancy
 777 occurring on the board before the expiration of a term may be
 778 filled by the affirmative vote of the majority of the remaining
 779 directors, even if the remaining directors constitute less than
 780 a quorum, or by the sole remaining director. In the alternative,
 781 a board may hold an election to fill the vacancy, in which case
 782 the election procedures must conform to the requirements of
 783 subparagraph 1. unless the association has opted out of the

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784 statutory election process, in which case the bylaws of the
 785 association control. Unless otherwise provided in the bylaws,
 786 the term of a board member appointed or elected under this
 787 subparagraph expires at the next annual meeting at which
 788 directors are elected ~~shall fill the vacancy for the unexpired~~
 789 ~~term of the seat being filled~~. Filling vacancies created by
 790 recall is governed by paragraph (f) and rules adopted by the
 791 division.

792
 793 Notwithstanding subparagraphs (b)2. and (d)1., an association
 794 may, by the affirmative vote of a majority of the total voting
 795 interests, provide for a different voting and election procedure
 796 in its bylaws, which vote may be by a proxy specifically
 797 delineating the different voting and election procedures. The
 798 different voting and election procedures may provide for
 799 elections to be conducted by limited or general proxy.

800 Section 9. Subsections (1), (3), (4), and (9) of section
 801 719.108, Florida Statutes, are amended to read:

802 719.108 Rents and assessments; liability; lien and
 803 priority; interest; collection; cooperative ownership.-

804 (1) A unit owner, regardless of how his or her title has
 805 been ~~is~~ acquired, including by purchase, ~~without limitation, a~~
 806 ~~purchaser~~ at a foreclosure judicial sale or by deed in lieu of
 807 foreclosure, ~~is shall be~~ liable for all ~~rents and~~ assessments
 808 that come coming due while he or she is the unit owner ~~is in~~
 809 ~~exclusive possession of a unit~~. Additionally, a ~~In a voluntary~~
 810 ~~transfer, the unit owner is in exclusive possession shall be~~
 811 jointly and severally liable with the previous ~~unit~~ owner for
 812 all unpaid ~~rents and~~ assessments that came due against the

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813 ~~previous unit owner for his or her share of the common expenses~~
 814 ~~up to the time of the transfer, as well as interest, late~~
 815 ~~charges, and reasonable costs and attorney fees incurred by the~~
 816 ~~association incident to the collection process. This liability~~
 817 ~~is without prejudice to any right the rights of the unit owner~~
 818 ~~may have in exclusive possession to recover from the previous~~
 819 ~~unit owner the amounts paid by the unit owner in exclusive~~
 820 ~~possession therefor. For purposes of this subsection, the term~~
 821 ~~"previous owner" does not include an association that acquires~~
 822 ~~title to a delinquent property through foreclosure or by deed in~~
 823 ~~lieu of foreclosure. The present unit owner's liability for~~
 824 ~~unpaid assessments, interest, late charges, and reasonable costs~~
 825 ~~and attorney fees incurred by the association incident to the~~
 826 ~~collection process is limited to those amounts that accrued~~
 827 ~~before the association acquired title to the delinquent property~~
 828 ~~through foreclosure or by deed in lieu of foreclosure.~~

829 (3) Rents and assessments, and installments on them, not
 830 paid when due bear interest at the rate provided in the
 831 cooperative documents from the date due until paid. This rate
 832 may not exceed the rate allowed by law and, if a rate is not
 833 provided in the cooperative documents, accrues at 18 percent per
 834 annum. If the cooperative documents or bylaws so provide, the
 835 association may charge an administrative late fee in addition to
 836 such interest, not to exceed the greater of \$25 or 5 percent of
 837 each installment of the assessment for each delinquent
 838 installment that the payment is late. Any payment received by an
 839 association must be applied first to any interest accrued by the
 840 association, then to any administrative late fee, then to any
 841 ~~costs and reasonable costs and attorney attorney's fees incurred~~

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842 in collection, and then to the delinquent assessment. The
 843 foregoing applies notwithstanding any restrictive endorsement,
 844 designation, or instruction placed on or accompanying a payment.
 845 A late fee is not subject to chapter 687 or s. 719.303(4).

846 (4) The association has a lien on each cooperative parcel
 847 for any unpaid rents and assessments, plus interest, and any
 848 authorized administrative late fees. If authorized by the
 849 cooperative documents, the lien also secures reasonable costs
 850 and attorney attorney's fees incurred by the association
 851 incident to the collection of the rents and assessments or
 852 enforcement of such lien. The lien is effective from and after
 853 recording a claim of lien in the public records in the county in
 854 which the cooperative parcel is located which states the
 855 description of the cooperative parcel, the name of the unit
 856 owner, the amount due, and the due dates. The lien expires if a
 857 claim of lien is not filed within 1 year after the date the
 858 assessment was due, and the lien does not continue for longer
 859 than 1 year after the claim of lien has been recorded unless,
 860 within that time, an action to enforce the lien is commenced.
 861 Except as otherwise provided in this chapter, a lien may not be
 862 filed by the association against a cooperative parcel until 30
 863 days after the date on which a notice of intent to file a lien
 864 has been delivered to the owner.

865 (a) The notice must be sent to the unit owner at the
 866 address of the unit by first-class United States mail and:

867 1. If the most recent address of the unit owner on the
 868 records of the association is the address of the unit, the
 869 notice must be sent by registered or certified mail, return
 870 receipt requested, to the unit owner at the address of the unit.

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871 2. If the most recent address of the unit owner on the
872 records of the association is in the United States, but is not
873 the address of the unit, the notice must be sent by registered
874 or certified mail, return receipt requested, to the unit owner
875 at his or her most recent address.

876 3. If the most recent address of the unit owner on the
877 records of the association is not in the United States, the
878 notice must be sent by first-class United States mail to the
879 unit owner at his or her most recent address.

880 (b) A notice that is sent pursuant to this subsection is
881 deemed delivered upon mailing.

882 (9) The specific purposes of any special assessment,
883 including any contingent special assessment levied in
884 conjunction with the purchase of an insurance policy authorized
885 by s. 719.104(3), approved in accordance with the cooperative
886 documents shall be set forth in a written notice of such
887 assessment sent or delivered to each unit owner. The funds
888 collected pursuant to a special assessment ~~may shall~~ be used
889 only for the specific purpose or purposes set forth in such
890 notice or returned to the unit owners. However, upon completion
891 of such specific purposes, any excess funds shall be considered
892 common surplus and may, at the discretion of the board, either
893 be returned to the unit owners or applied as a credit toward
894 future assessments.

895 Section 10. Section 719.128, Florida Statutes, is created
896 to read:

897 719.128 Association emergency powers.—

898 (1) To the extent allowed by law, unless specifically
899 prohibited by the cooperative documents, and consistent with s.

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900 617.0830, the board of administration, in response to damage
901 caused by an event for which a state of emergency is declared
902 pursuant to s. 252.36 in a location in which the cooperative is
903 located, may exercise the following powers:

904 (a) Conduct board or membership meetings with notice of the
905 meetings and board decisions provided as is practicable,
906 including via publication, radio, United States mail, the
907 Internet, public service announcements, conspicuous posting on
908 the cooperative property, or any other means the board deems
909 appropriate under the circumstances.

910 (b) Cancel and reschedule an association meeting.

911 (c) Name assistant officers who are not directors. An
912 assistant officer has the same authority during the state of
913 emergency as the executive officer he or she assists if that
914 executive officer is incapacitated or unavailable.

915 (d) Relocate the association's principal office or
916 designate an alternative principal office.

917 (e) Enter into agreements with counties and municipalities
918 to assist counties and municipalities with debris removal.

919 (f) Implement a disaster plan before or immediately
920 following the event for which a state of emergency is declared
921 which may include, but is not limited to, shutting off
922 elevators; electricity; water, sewer, or security systems; or
923 air conditioners.

924 (g) Based upon the advice of emergency management officials
925 or upon the advice of licensed professionals retained by the
926 board, determine any portion of the cooperative property
927 unavailable for entry or occupancy by unit owners or their
928 family members, tenants, guests, agents, or invitees to protect

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929 their health, safety, or welfare.

930 (h) Based upon the advice of emergency management officials
 931 or upon the advice of licensed professionals retained by the
 932 board, determine whether the cooperative property can be safely
 933 inhabited or occupied. However, such determination is not
 934 conclusive as to any determination of habitability pursuant to
 935 the declaration.

936 (i) Require the evacuation of the cooperative property in
 937 the event of a mandatory evacuation order in the location in
 938 which the cooperative is located. If a unit owner or other
 939 occupant of a cooperative fails to evacuate the cooperative
 940 property for which the board has required evacuation, the
 941 association is immune from liability for injury to persons or
 942 property arising from such failure.

943 (j) Mitigate further damage, including taking action to
 944 contract for the removal of debris and to prevent or mitigate
 945 the spread of fungus, including, but not limited to, mold or
 946 mildew, by removing and disposing of wet drywall, insulation,
 947 carpet, cabinetry, or other fixtures on or within the
 948 cooperative property, regardless of whether the unit owner is
 949 obligated by the declaration or law to insure or replace those
 950 fixtures and to remove personal property from a unit.

951 (k) Contract, on behalf of a unit owner, for items or
 952 services for which the owner is otherwise individually
 953 responsible, but which are necessary to prevent further damage
 954 to the cooperative property. In such event, the unit owner on
 955 whose behalf the board has contracted is responsible for
 956 reimbursing the association for the actual costs of the items or
 957 services, and the association may use its lien authority

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958 provided by s. 719.108 to enforce collection of the charges.
 959 Without limitation, such items or services may include the
 960 drying of units, the boarding of broken windows or doors, and
 961 the replacement of damaged air conditioners or air handlers to
 962 provide climate control in the units or other portions of the
 963 property.

964 (l) Notwithstanding a provision to the contrary, and
 965 regardless of whether such authority does not specifically
 966 appear in the cooperative documents, levy special assessments
 967 without a vote of the owners.

968 (m) Without unit owners' approval, borrow money and pledge
 969 association assets as collateral to fund emergency repairs and
 970 carry out the duties of the association if operating funds are
 971 insufficient. This paragraph does not limit the general
 972 authority of the association to borrow money, subject to such
 973 restrictions contained in the cooperative documents.

974 (2) The authority granted under subsection (1) is limited
 975 to that time reasonably necessary to protect the health, safety,
 976 and welfare of the association and the unit owners and their
 977 family members, tenants, guests, agents, or invitees, and to
 978 mitigate further damage and make emergency repairs.

979 Section 11. Paragraphs (a) and (b) of subsection (2) of
 980 section 720.3085, Florida Statutes, are amended to read:

981 720.3085 Payment for assessments; lien claims.—

982 (2) (a) A parcel owner is liable for all assessments that
 983 come due while the parcel owner owns the parcel, regardless of
 984 how the parcel owner acquired his or her title to the property
 985 ~~has been acquired~~, including by purchase at a foreclosure sale
 986 ~~or by deed in lieu of foreclosure, is liable for all assessments~~

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987 ~~that come due while he or she is the parcel owner. The parcel~~
 988 ~~owner's liability for assessments may not be avoided by waiver~~
 989 ~~or suspension of the use or enjoyment of any common area or by~~
 990 ~~abandonment of the parcel upon which the assessments are made.~~

991 (b) A parcel owner is jointly and severally liable with the
 992 previous parcel owner for all unpaid assessments that came due
 993 up to the time of transfer of title, as well as interest, late
 994 charges, and reasonable costs and attorney fees incurred by the
 995 association incident to the collection process. This liability
 996 is without prejudice to any right the present parcel owner may
 997 have to recover any amounts paid by the present owner from the
 998 previous owner. For the purposes of this paragraph, the term
 999 "previous owner" ~~does shall~~ not include an association that
 1000 acquires title to a delinquent property through foreclosure or
 1001 by deed in lieu of foreclosure. The present parcel owner's
 1002 liability for unpaid assessments, interest, late charges, and
 1003 reasonable costs and attorney fees incurred by the association
 1004 incident to the collection process is limited to the amounts any
 1005 ~~unpaid assessments~~ that accrued before the association acquired
 1006 title to the delinquent property through foreclosure or by deed
 1007 in lieu of foreclosure.

1008 Section 12. Section 720.316, Florida Statutes, is created
 1009 to read:

1010 720.316 Association emergency powers.—

1011 (1) To the extent allowed by law, unless specifically
 1012 prohibited by the governing documents, and consistent with s.
 1013 617.0830, the board of directors, in response to damage caused
 1014 by an event for which a state of emergency is declared pursuant
 1015 to s. 252.36 in a location in which the association is located,

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1016 may exercise the following powers:

1017 (a) Conduct board or membership meetings with notice of the
 1018 meetings and board decisions provided as is practicable,
 1019 including via publication, radio, United States mail, the
 1020 Internet, public service announcements, conspicuous posting on
 1021 the association property, or any other means the board deems
 1022 appropriate under the circumstances.

1023 (b) Cancel and reschedule an association meeting.

1024 (c) Name assistant officers who are not directors. An
 1025 assistant officer has the same authority during the state of
 1026 emergency as the executive officer he or she assists if that
 1027 executive officer is incapacitated or unavailable.

1028 (d) Relocate the association's principal office or
 1029 designate an alternative principal office.

1030 (e) Enter into agreements with counties and municipalities
 1031 to assist counties and municipalities with debris removal.

1032 (f) Implement a disaster plan before or immediately
 1033 following the event for which a state of emergency is declared
 1034 which may include, but is not limited to, shutting off
 1035 elevators; electricity; water, sewer, or security systems; or
 1036 air conditioners for association buildings.

1037 (g) Based upon the advice of emergency management officials
 1038 or upon the advice of licensed professionals retained by the
 1039 board, determine any portion of the association property
 1040 unavailable for entry or occupancy by owners or their family
 1041 members, tenants, guests, agents, or invitees to protect their
 1042 health, safety, or welfare.

1043 (h) Based upon the advice of emergency management officials
 1044 or upon the advice of licensed professionals retained by the

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1045 board, determine whether the association property can be safely
1046 inhabited or occupied. However, such determination is not
1047 conclusive as to any determination of habitability pursuant to
1048 the declaration.

1049 (i) Mitigate further damage, including taking action to
1050 contract for the removal of debris and to prevent or mitigate
1051 the spread of fungus, including, but not limited to, mold or
1052 mildew, by removing and disposing of wet drywall, insulation,
1053 carpet, cabinetry, or other fixtures on or within the
1054 association property.

1055 (j) Notwithstanding a provision to the contrary, and
1056 regardless of whether such authority does not specifically
1057 appear in the governing documents, levy special assessments
1058 without a vote of the owners.

1059 (k) Without owners' approval, borrow money and pledge
1060 association assets as collateral to fund emergency repairs and
1061 carry out the duties of the association if operating funds are
1062 insufficient. This paragraph does not limit the general
1063 authority of the association to borrow money, subject to such
1064 restrictions contained in the governing documents.

1065 (2) The authority granted under subsection (1) is limited
1066 to that time reasonably necessary to protect the health, safety,
1067 and welfare of the association and the parcel owners and their
1068 family members, tenants, guests, agents, or invitees, and to
1069 mitigate further damage and make emergency repairs.

1070 Section 13. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JEREMY RING
29th District

February 6, 2014

Honorable Senator Kelli Stargel
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairwoman Stargel,

I am writing to respectfully request your cooperation in placing Senate Bill 798, relating to Real and Personal Property on the Regulated Industries agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Booter Imhof

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 692

INTRODUCER: Senator Stargel

SUBJECT: Engineers

DATE: February 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Niles	Imhof	RI	Pre-meeting
2.	_____	_____	EE	_____
3.	_____	_____	GO	_____

I. Summary:

SB 692 amends s. 471.007, F.S., revising the qualifications and procedures for the appointment and reappointment of members to the Board of Professional Engineers and providing staggered terms.

The bill amends s. 471.013, F.S., revising the requirements for an applicant who fails more than three times who wishes to retake an examination in order to practice in the state as an engineer, and allowing additional attempts for an applicant delayed in taking the examination due to his or her service in the U.S. Armed Forces.

The bill amends s. 471.017, F.S., revising the requirements for license renewal for engineers by increasing professional development hours needed during a two-year renewal period from eight to twenty and capping hours that may be gained for specific activities.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Section 471.007(1), F.S., creates the Board of Professional Engineers (board) in the Department of Business and Professional Regulation (department). Members of the board are appointed by the Governor for terms of four years each.¹ The board consists of eleven members, nine licensed engineers and two laypersons who have never been engineers or members of a loosely related profession.²

¹ Section 471.007(2), F.S.

² Section 471.007(1), F.S.

Of the nine licensed engineers, the following six are required:³

- One structural engineer;
- One electrical or electronic engineer;
- One mechanical engineer;
- One industrial engineer;
- One engineering educator; and
- One from any engineering discipline other than civil engineering.

According to Florida Engineering Society (FES), it has been difficult to find individuals to fill these specified roles, and board membership is an extremely technical position with a “steep learning curve.”⁴ Currently, the new board members are appointed and begin terms at the same time every four years.

Section 471.013, F.S., sets out the examination prerequisites for a person to take an examination for the purpose of determining whether he or she is qualified to practice in this state as an engineer. The examination, provided by the National Council of Engineers and Surveyors (NCEES), is a two-part exam covering fundamentals (Part I) and principles and practice (Part II).⁵ Applicants for licensure by examination must apply to take the examinations and be graduates of a board approved engineering program defined in the rules.⁶ The acceptance of the fundamentals exam does not automatically mean acceptance to take the principles and practice examination.⁷

Section 471.013(1)(e), F.S., allows every qualified candidate to take either examination up to three times. Eligibility to take an examination after failing three times is conditioned on an applicant completing twelve additional college-level credit hours with grades of at least “C” or equivalent.⁸ For Part I, these additional courses are undergraduate courses in higher mathematics, basic sciences or engineering as described in the rules.⁹ For Part II, these additional courses shall be upper level courses in engineering as defined in the rules.¹⁰

Section 471.017, F.S., lays out the biennial renewal requirements for a licensed engineer. Section 471.017(3), F.S., requires a demonstration of continuing professional competency for renewal. Four professional development hours are required each year of the license renewal period for a total of eight hours.¹¹ Four hours shall relate to chapter 471, F.S., and the remaining four hours shall relate to the licensee’s practice area.¹² Section 471.017(3), F.S., authorizes the board to adopt rules consistent with the guidelines of the National Council of Examiners for Engineering

³ *Id.*

⁴ Conversation with Frank Rudd, Florida Engineering Society (FES)(Feb. 6, 2014). (Allowing varying term times allows experienced members to consistently occupy the board and introduce new members to their duties.)

⁵ Rule 61G15-21.001(1), F.A.C.

⁶ *See* rule 61G15-21.001(2), F.A.C.

⁷ *Id.*; *see also* s. 471.013, F.S.

⁸ Section 471.013(1)(e), F.S.; *see also* rule 61G15-21.007, F.A.C.

⁹ Rule 61G15-21.007, F.A.C.; *see also* 61G15-20.007(1)(a), (b) and (c), F.A.C. for described courses.

¹⁰ *Id.*; *see also* 61G15-20.007(1)(c), F.A.C. for described courses.

¹¹ Section 471.017(3), F.S.

¹² *Id.*

and Surveying (Council) for the purpose of avoiding proprietary continuing professional competency requirements¹³ and shall allow non-classroom hours to be credited.

The council's model rules section 240.30, Continuing Professional Competency guidelines are set forth for the purpose of providing consistency in those jurisdictions that adopt mandatory requirements and for those that wish to encourage voluntary usage, and to demonstrate a level of competency of professionals.¹⁴

The Florida Engineering Society (FES) supports engineering education, advocates licensure, promotes the ethical and competent practice of engineering and enhances the image and well-being of all engineers in the state of Florida.¹⁵ The FES has 3,200 members.¹⁶

III. Effect of Proposed Changes:

Board of Professional Engineers Membership and Appointment

SB 692 amends s. 471.007(1), F.S., to remove the requirement that members in specified fields make up the board. The bill adds the requirement that board members who are licensed engineers be selected and appointed based on their qualifications and experience to provide expertise to the board in civil engineering, structural engineering, electrical or electronic engineering, mechanical engineering, plumbing engineering, fire protection engineering, or engineering education.

Members appointed by the governor are required to be appointed from a list of qualified nominees submitted by the Florida Engineering Society, if such list is submitted.

The bill creates varying term periods for members who take the place of those exiting their role as of July 14, 2014. The terms of these immediate successors as determined by the Governor shall be staggered as follows:

- Three members are appointed for two years,
- Four members are appointed for three years, and
- Four members are appointed for four years.

The bill permits members to be reappointed for successive terms.

The bill permits the board to elect a provisional member if a vacancy on the board is open due to resignation, death, or other cause and is not filled by the Governor within three months, until the Governor appoints a successor.

Conditions to Retake an Examination

The bill amends s. 471.013, F.S., adding an option for the board, which can now require completion of a relevant examination review course, or the previously mandated additional

¹³National Council of Examiners for Engineering and Surveying, *Continuing Professional Competency Guidelines*, (Aug. 2013) available at <http://ncees.org/about-ncees/publications/> follow hyperlink "continuing professional competency guideline" (Last visited Feb. 6, 2014).

¹⁴ *Id.*

¹⁵ Florida Engineering Society About Us available at <http://www.fleng.org/mission.cfm> (Last visited Feb. 19, 2014).

¹⁶ *Id.*

college-level courses, as a condition of future eligibility to take an examination for an applicant who has failed that examination three times.

The bill allows an applicant who is delayed in taking the examination due to his or her service in the U.S. Armed Forces to have two additional attempts, five altogether, to take the examination before the board will require additional college-level courses or an examination review course.

Professional Development Hours

The bill amends s. 471.017, F.S., requiring at least ten professional development hours for each year of the license renewal period, for a total of twenty hours for each two-year renewal period. For each renewal period, subparagraphs are created under s. 471.017(3)(a), F.S., specifying continuing education hours:

- Four hours must relate to chapter 471, F.S., rules adopted under ch. 471, F.S., and professional ethics;
- Four hours must relate to the licensee's practice area; and
- The remaining twelve may relate to any topic pertinent to the practice of engineering.

The bill allows for up to twelve professional development hours to be earned by presenting seminars, in-house courses, workshops, professional or technical presentations, or conferences, including those presented by vendors with specific knowledge related to the licensee's area of practice. It allows for up to four hours to be earned by serving as an officer or actively participating on a committee of FES. It allows courses already required under s. 471.095, F.S.,¹⁷ to apply to these requirements, except the hours relating to chapter 471, F.S., required under subparagraph one.

The bill also amends s. 471.017(3)(b), F.S., to require the board to adopt rules that are substantially consistent with the Continuing Professional Competency Guidelines of the Council.¹⁸

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ Licensees actively participating in the design of engineering works or systems in connection with buildings, structures, or facilities and systems covered by the Florida Building Code shall take continuing education courses per this section,

¹⁸ NCEES, *Continuing Professional Competency Guidelines*, (Aug. 2013) available at <http://ncees.org/about-ncees/publications/> follow hyperlink "continuing professional competency guideline" (Last visited Feb. 6, 2014).

D. Other Constitutional Issues:

Section 471.007(2), F.S., now requires the Governor to appoint board members from a list created by the FES, which appears to conflict with the Florida Constitution, Art. IV, Section 1(a) since the statute would impinge upon the Governor's constitutional appointment power, *see Westlake v. Merritt*, 85 Fla. 28, 95 So. 662 (Fla. 1923).¹⁹ Requiring that the appointment must be made from such a list would elevate the FES' authority beyond the constitutionally permitted standard of simply providing advice, *see Schneider v. Sweetland*, 214 So.2d 338 (Fla. 1968).²⁰

According to the FES, the purpose of this list is to provide the governor options for his appointments in order to increase efficiency and timeliness of the appointment process.²¹ This goal may be achieved by a list of recommendations to the governor for him to consider when appointing members.

Section 471.007(4), F.S., may conflict with s. 20.165(5), F.S., in that the new provision allows board members to be appointed for "successive terms" with no apparent limitation on the number of such terms.²²

Section 471.007(4), F.S., also provides that the board may appoint "provisional members" to serve out a term of a vacant board member position if the Governor does not make an appointment within 3 months of the vacancy, which would appear to conflict with Art. IV, Section 1(a) since as a result of the new provision, the board, an entity other than the Governor, would be allowed to commission a state officer.²³

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill increases the hours of professional development, which may increase the cost for renewal applicants and increase revenue for continuing education providers.

C. Government Sector Impact:

The bill will create additional workload related to the review of disclosure materials and possible compliance actions; however, the additional workload should be able to be handled by existing staff.²⁴

¹⁹ 2014 Legislative Bill Analysis for SB 692, Florida Board of Professional Engineers. (Feb. 18, 2014).

²⁰ *Id.*

²¹ Conversation with Frank Rudd, Florida Engineering Society (Feb. 6, 2014).

²² 2014 Legislative Bill Analysis for SB 692, Florida Board of Professional Engineers. (Feb. 18, 2014).

²³ *Id.*

²⁴ *Id.*

VI. Technical Deficiencies:

The bill keeps the four-year term period for members but then describes a varying term membership plan for those serving after July 14, 2014. Language indicating that a four-year appointment will reapply in subsequent appointments may be appropriate.

VII. Related Issues:

The bill states that ten hours are now required for each year of the renewal period and then follows with the total amount of hours for specific items during the two year period. For consistency, it may be beneficial to state that a licensee must complete at least ten hours for each year of license renewal period, for a total of at least twenty years, and then state the specified required hours needed of the total twenty.

The bill amends Section 471.013(1)(e), F.S., to allow examination applicants who have failed the examination three times to take either college level courses, as presently allowed, or “a relevant examination review course” as a prerequisite to an additional sitting for the examination. The bill provides no rule making authority to the board to define the scope of “a relevant examination review course.”²⁵

The bill allows examination applicants delayed in taking the examination due to service in the Armed Forces two additional examination attempts, but grants no rulemaking authority to the board to implement this provision and no parameters around what the “delay” may encompass.²⁶

The bill amends s. 471.017(3), F.S., to increase the number of continuing education hours from eight hours per biennium to 10 for each year of the biennial renewal period. The bill also provides that coursework is acceptable if it “relate[s] to any topic pertinent to the practice of engineering.” The bill further allows continuing education hours to be earned by presenting or attending certain seminars, courses, conventions, etc., and allows members of the Florida Engineering Society to earn hours by serving in a leadership capacity of the FES. No rulemaking authority is granted to the board to implement these provisions. Additionally, providing continuing education credit to licensees for providing service to a private association may raise Substantive Due Process questions.²⁷ According to the Florida Board of Professional Engineers, there are two relevant questions that may arise. First, although service on the board as an officer or on a committee for the FES may be rationally related to keeping up professional competence, the bill lacks criteria for the type of service necessary, so even a committee set up to organize social events may be used by members for professional competence hours. Second, the bill only allows FES service to count, although there are similarly situated engineering associations, and there may not be a rational basis to single out service done for FES.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 471.007, 471.013, and 471.017.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



205124

LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 471.007, Florida Statutes, is amended to
read:

471.007 Board of Professional Engineers.—

(1) There is created in the department the Board of



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10 Professional Engineers. The board shall consist of 11 members,
11 nine of whom shall be licensed engineers and two of whom shall
12 be laypersons who are not and have never been engineers or
13 members of any closely related profession or occupation. The
14 members of the board who are licensed engineers must be
15 appointed based on their qualifications to provide expertise and
16 experience to the board at all times in civil engineering,
17 structural engineering, electrical or electronic engineering,
18 mechanical engineering, or engineering education ~~Of the members~~
19 ~~who are licensed engineers, three shall be civil engineers, one~~
20 ~~shall be a structural engineer, one shall be either an~~
21 ~~electrical or electronic engineer, one shall be a mechanical~~
22 ~~engineer, one shall be an industrial engineer, one shall be an~~
23 ~~engineering educator, and one shall be from any discipline of~~
24 ~~engineering other than civil engineering.~~

25 (2) Following the expiration of the initial staggered terms
26 under subsection (3), members of the board ~~Members~~ shall be
27 appointed by the Governor for terms of 4 years each.
28 Professional and technical engineering societies may submit a
29 list of qualified nominees to be considered by the Governor for
30 appointment.

31 (3) When the terms of members serving as of July 1, 2014,
32 expire, the terms of their immediate successors shall be
33 staggered so that three members are appointed for 2 years, four
34 members are appointed for 3 years, and four members are
35 appointed for 4 years, as determined by the Governor. Each
36 member holds office until the expiration of his or her appointed
37 term or until a successor has been appointed.

38 Section 2. Paragraph (e) of subsection (1) of section



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39 471.013, Florida Statutes, is amended to read:

40 471.013 Examinations; prerequisites.—

41 (1)

42 (e) Every applicant who is qualified to take the
43 fundamentals examination or the principles and practice
44 examination shall be allowed to take either examination three
45 times, notwithstanding the number of times either examination
46 has been previously failed. If an applicant fails either
47 examination three times, the board shall require the applicant
48 to complete additional college-level education courses or a
49 board-approved relevant examination review course as a condition
50 of future eligibility to take that examination. If the applicant
51 is delayed in taking the examination due to reserve or active
52 duty service in the United States Armed Forces or National
53 Guard, the applicant is allowed an additional two attempts to
54 take the examination before the board may require additional
55 college-level education or review courses.

56 Section 3. Paragraph (a) of subsection (5) of section
57 471.015, Florida Statutes, is amended to read:

58 471.015 Licensure.—

59 (5) (a) The board shall deem that an applicant who seeks
60 licensure by endorsement has passed an examination substantially
61 equivalent to the fundamentals examination when such applicant
62 has÷

63 ~~1. Has held a valid professional engineer's license in~~
64 ~~another state for 15 years and has had 20 years of continuous~~
65 ~~professional-level engineering experience~~÷

66 ~~2. Has received a doctorate degree in engineering from an~~
67 ~~institution that has an undergraduate engineering degree program~~



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68 ~~which is accredited by the Accreditation Board for Engineering~~
69 ~~Technology; or~~

70 ~~3. Has received a doctorate degree in engineering and has~~
71 ~~taught engineering full time for at least 3 years, at the~~
72 ~~baccalaureate level or higher, after receiving that degree.~~

73 Section 4. Effective March 1, 2015, subsection (3) of
74 section 471.017, Florida Statutes, is amended to read:

75 471.017 Renewal of license.—

76 (3)(a) The board shall require a demonstration of
77 continuing professional competency of engineers as a condition
78 of license renewal or relicensure. Every licensee must complete
79 9 continuing education ~~4 professional development~~ hours, for
80 each year of the license renewal period, totaling 18 continuing
81 education hours for the license renewal period. For each renewal
82 period for such continuing education: ~~7~~ 4

83 1. One hour must ~~hours shall~~ relate to this chapter and the
84 rules adopted under this chapter;

85 2. One hour must relate to professional ethics; ~~and the~~
86 ~~remaining 4~~

87 3. Four hours must ~~shall~~ relate to the licensee's area of
88 practice; and

89 4. The remaining hours may relate to any topic pertinent to
90 the practice of engineering.

91
92 Continuing education hours may be earned by presenting or
93 attending seminars, in-house or nonclassroom courses, workshops,
94 or professional or technical presentations made at meetings,
95 webinars, conventions, or conferences, including those presented
96 by vendors with specific knowledge related to the licensee's



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126 An act relating to engineers; amending s. 471.007,
127 F.S.; revising requirements for membership on the
128 Board of Professional Engineers; authorizing the
129 professional and technical engineering societies to
130 provide a list of qualified nominees for consideration
131 as board member appointments; providing for staggered
132 terms; amending s. 471.013, F.S.; revising
133 requirements for an engineer license applicant who
134 fails the fundamentals examination; authorizing such
135 applicant who is delayed in taking the examination by
136 military service to have additional attempts to take
137 the examination; amending s. 471.015, F.S.; revising
138 requirements for obtaining a licensure by endorsement;
139 amending s. 471.017, F.S.; revising requirements for
140 professional development hours and license renewal for
141 engineers; providing effective dates.

By Senator Stargel

15-00544A-14

2014692__

A bill to be entitled

An act relating to engineers; amending s. 471.007, F.S.; revising qualifications and procedures for the appointment and reappointment of members to the Board of Professional Engineers; providing staggered terms; amending s. 471.013, F.S.; revising requirements for an applicant who fails a certain examination and wants to retake it in order to practice in the state as an engineer; authorizing an applicant who is delayed in taking the examination because of military service to have additional attempts to take the examination; amending s. 471.017, F.S.; revising requirements for professional development hours and license renewal for engineers; providing an effective date.

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

Section 1. Section 471.007, Florida Statutes, is amended to read:

471.007 Board of Professional Engineers.-

(1) There is created in the department the Board of Professional Engineers. The board shall consist of 11 members, 9 ~~nine~~ of whom shall be licensed engineers and 2 ~~two~~ of whom shall be laypersons who are not and have never been engineers or members of any closely related profession or occupation. Licensed engineers shall be selected and appointed based on their qualifications and experience to provide expertise to the board in civil engineering, structural engineering, electrical or electronic engineering, mechanical engineering, plumbing

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

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engineering, fire protection engineering, or engineering education ~~Of the members who are licensed engineers, three shall be civil engineers, one shall be a structural engineer, one shall be either an electrical or electronic engineer, one shall be a mechanical engineer, one shall be an industrial engineer, one shall be an engineering educator, and one shall be from any discipline of engineering other than civil engineering.~~

(2) Members of the board shall be appointed by the Governor for terms of 4 years each. Members shall be appointed from a list of qualified nominees submitted by the Florida Engineering Society if such list is submitted.

(3) When the terms of members serving as of July 1, 2014, expire, the terms of their immediate successors shall be staggered so that three members are appointed for 2 years, four members are appointed for 3 years, and four members are appointed for 4 years, as determined by the Governor. Each member holds office until the expiration of his or her appointed term or until a successor has been appointed.

(4) Members may be reappointed for successive terms. If a vacancy on the board, due to resignation, death, or any other cause, is not filled by the Governor within 3 months after the vacancy occurs, the board may elect a provisional member to serve until the Governor appoints a successor.

Section 2. Paragraph (e) of subsection (1) of section 471.013, Florida Statutes, is amended to read:

471.013 Examinations; prerequisites.-

(1)

(e) An Every applicant who is qualified to take the fundamentals examination or the principles and practice

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

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59 examination ~~may shall be allowed to~~ take either examination
60 three times, notwithstanding the number of times either
61 examination has been previously failed. If an applicant fails
62 either examination three times, the board shall require the
63 applicant to complete additional college-level education courses
64 or a relevant examination review course as a condition of future
65 eligibility to take that examination. If the applicant is
66 delayed in taking the examination due to his or her service in
67 the United States Armed Forces, the applicant is allowed two
68 additional attempts to take the examination before the board may
69 require additional college-level education or examination review
70 courses.

71 Section 3. Subsection (3) of section 471.017, Florida
72 Statutes, is amended to read:

73 471.017 Renewal of license.—

74 (3) (a) The board shall require a demonstration of
75 continuing professional competency of engineers as a condition
76 of license renewal or relicensure. ~~Each~~ Every licensee must
77 complete at least 10 4 professional development hours~~7~~, for each
78 year of the license renewal period. For each renewal period for
79 such continuing education:

80 1. Four 74 hours must shall relate to this chapter, ~~and~~
81 the rules adopted under this chapter, and professional ethics;

82 2. Four and the remaining 4 hours must shall relate to the
83 licensee's area of practice; and

84 3. The remaining hours may relate to any topic pertinent to
85 the practice of engineering.

86
87 Up to 12 hours may be earned by presenting or attending

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88 seminars, in-house courses, workshops, or professional or
89 technical presentations given at meetings, conventions, or
90 conferences, including those presented by vendors with specific
91 knowledge related to the licensee's area of practice. Up to 4
92 hours may be earned by serving as an officer or actively
93 participating on a committee of the Florida Engineering Society.
94 The courses required under s. 471.0195 may apply to the
95 requirements of this paragraph except the requirement under
96 subparagraph 1.

97 (b) The board shall adopt rules that are substantially
98 consistent with the Continuing Professional Competency
99 Guidelines of the National Council of Examiners for Engineering
100 and Surveying ~~for multijurisdictional licensees for the purpose~~
101 ~~of avoiding proprietary continuing professional competency~~
102 ~~requirements~~ and shall allow nonclassroom hours to be credited.
103 The board may, by rule, exempt from continuing professional
104 competency requirements retired professional engineers who no
105 longer sign and seal engineering documents and licensees in
106 unique circumstances that severely limit opportunities to obtain
107 the required professional development hours.

108 Section 4. This act shall take effect July 1, 2014.