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	

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.

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[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 states[11] have passed fair and uniform pharmacy audit laws that regulate PBM pharmacy audit practices. Elements of these laws typically include:

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[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.

By Senator Bean

4-01182-14 2014702__

A bill to be entitled

An act relating to pharmacy audits; creating s. 465.1885, F.S.; 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; providing an effective date.

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

Section 1. Section 465.1885, Florida Statutes, is created to read:

465.1885 Pharmacy audits; rights.—

(1) If an audit of the records of a pharmacy licensed under this chapter is conducted directly or indirectly by a managed care company, an insurance company, a third-party payor, a pharmacy benefit manager, or an entity that represents responsible parties such as companies or groups, referred to as an "entity" in this section, the pharmacy has the following rights:

(a) To be notified at least 7 calendar days before the initial on-site audit for each audit cycle.

(b) To have the on-site audit scheduled after the first 5 calendar days of a month unless the pharmacist consents otherwise.

(c) To have the audit period limited to 24 months after the date a claim is submitted to or adjudicated by the entity.

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(d) To have an audit that requires clinical or professional judgment conducted by or in consultation with a pharmacist.

(e) To use the records of a hospital, physician, or other authorized practitioner, which are transmitted by any means of communication, to validate the pharmacy records.

(f) 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 was properly and correctly dispensed, unless a pattern of such errors exists or fraudulent billing is alleged.

(g) To receive the preliminary audit report within 90 days after the conclusion of the audit.

(h) To produce documentation to address a discrepancy or audit finding within 10 business days after the preliminary audit report is delivered to the pharmacy.

(i) To receive the final audit report within 6 months after receiving the preliminary audit report.

(j) To have recoupment or penalties based on actual overpayments and not according to the accounting practice of extrapolation.

(2) The rights contained in this section do not apply to audits in which fraudulent activity is suspected or to audits related to fee-for-service claims under the Medicaid program.

(3) A pharmacy injured as a result of a willful violation of this section shall have a civil cause of action for treble damages, reasonable attorney fees, and costs.

Section 2. This act shall take effect July 1, 2014.

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

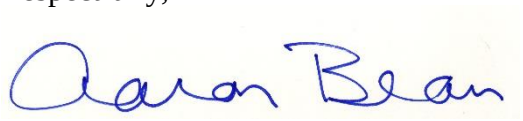
February 12, 2014

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,



Aaron Bean
State Senator, 4th District

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

/jk

REPLY TO:
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❒ 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 USP[1] 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.
[2] Florida 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 manufacturing[9] 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:

[9]Manufacturing 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, barters, 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 meetings[13]

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 department[16]

- 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 . 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:

603004

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

246424

LEGISLATIVE ACTION

Senate . 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

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

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

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

1. Return the permit to the department; and

2. If the permittee is authorized to distribute medical gas, indicate the disposition of such medical gas, including the name, address, and inventory, and provide the name and address of a person to contact regarding access to the records that are required to be maintained under this part. Transfer of ownership of medical gas may be made only to persons authorized to receive medical gas pursuant to this part.

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

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

725522

LEGISLATIVE ACTION

Senate . 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

and insert:
jurisdiction in which the person receives the medical 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.

279808

LEGISLATIVE ACTION

Senate . 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

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laws of this state.

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

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

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

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

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

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

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

And the title is amended as follows:

Delete lines 79 - 82

and insert:

to inspect wholesale distributors; creating s.

279808

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

By Senator Bean

4-00674-14 2014836__

A bill to be entitled

An act relating to medical gas; creating part III of ch. 499, F.S., entitled "Medical Gas"; creating s. 499.81, F.S.; defining terms; creating s. 499.82, F.S.; 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; listing the people or entities that are legally authorized to receive medical gas; establishing categories of permits and setting requirements for each; creating s. 499.821, F.S.; requiring the Department of Business and Professional Regulation to establish the form and content of an application; stating that an applicant who is denied a permit has a right of review pursuant to ch. 120, F.S.; requiring the department to ensure that information obtained during the application process identified as trade secret is maintained and remains confidential; authorizing the department to set fees within certain parameters; creating s. 499.822, F.S.; requiring a permit to expire 2 years after the last day of the month in which the permit was issued; providing requirements for the renewal of a permit; requiring the department to adopt rules for the renewal of permits; creating s. 499.823, F.S.; authorizing the department to consider certain factors in determining the eligibility of an applicant; creating s. 499.824, F.S.; authorizing the department to approve certain permitholder changes; authorizing

4-00674-14 2014836__

the department to revoke the permit of a person that fails to comply with this section; creating s. 499.83, F.S.; requiring an applicant for or a holder of a permit as a wholesale distributor of medical gas or as a medical oxygen retailer to designate a registered agent; creating s. 499.84, F.S.; setting the minimum requirements for the storage and handling of medical gas; creating s. 499.85, F.S.; requiring a wholesale distributor of medical gas to implement measures to secure the location from unauthorized entry; setting facility requirements for security purposes; authorizing a vehicle used for on-call delivery of oxygen USP and oxygen-related equipment to be parked at a place of residence; requiring the department to adopt rules governing the wholesale distribution of prescription medical oxygen; creating s. 499.86, F.S.; requiring a wholesale distributor of medical gases to visually examine an immediate container upon receipt for identity and to determine if the medical gas container has been damaged or is otherwise unfit for distribution; requiring a medical gas container that is damaged or otherwise unfit for distribution to be quarantined; requiring outgoing shipments to be inspected; requiring wholesale distributors to review certain records; creating s. 499.87, F.S.; authorizing the return of medical gas that has left the control of the wholesale distributor; requiring that medical gas that is damaged, misbranded, or adulterated be quarantined from other medical gases until it is

destroyed or returned to the manufacturer or wholesale distributor from which it was acquired; creating s. 499.88, F.S.; requiring a wholesale distributor to obtain certain information before the initial acquisition of the medical gas; providing certain exemptions; creating s. 499.89, F.S.; requiring a wholesale distributor to establish and maintain transactional records; providing a retention period for certain records and requiring that the records be available for inspection during that period; creating s. 499.90, F.S.; requiring a wholesale distributor to establish, maintain, and adhere to certain written policies and procedures; creating s. 499.91, F.S.; prohibiting certain acts; creating s. 499.92, F.S.; establishing criminal penalties; authorizing property or assets subject to forfeiture to be seized pursuant to a warrant; creating s. 499.93, F.S.; authorizing the department to require a facility that engages in wholesale distribution to undergo an inspection; authorizing the department to authorize a third party to inspect wholesale distributors; requiring the department to ensure that information obtained during the inspection process identified as trade secret is maintained and remains confidential; creating s. 499.94, F.S.; requiring fees collected pursuant to this part to be deposited into the Professional Regulation Trust Fund; creating s. 499.95, F.S.; authorizing the department for the purpose of initiating an investigation or proceeding under this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Dispensing or administering medical gas;

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

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

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

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

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

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

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

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

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

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

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

(12) "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.

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

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

is false or misleading or a label that does not:

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

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

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

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

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

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

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

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

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

regular distribution schedule;

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

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

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

(c) An intracompany transaction;

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

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

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

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

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

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

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

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

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

499.82 Permits.—

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

(2) All of the following are legally 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.

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

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

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

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

(7) The following permits are established:

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

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

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

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

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

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

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

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

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

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

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

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

manufacturing practices.

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

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

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

499.821 Permit application.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

499.822 Expiration and renewal of a permit.—

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

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

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

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

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

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

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

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

(2) The applicant’s criminal convictions;

(3) The applicant’s past experience in manufacturing or distributing medical gas;

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

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

(6) Compliance with previously granted permit requirements;

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

(8) Any other factors or qualifications that the department

considers relevant to and consistent with public health and safety.

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

499.824 Permitholder changes.—

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

(a) *Change of location.*—A person or entity permitted under this part must notify the department before making a change of 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 services such that legal liability for operation of the establishment will rest with the lessee, an application for a new permit is required. The application for the new permit must be made before the change of ownership. However, if an applicant is a permitholder or is wholly owned by or wholly owns a permitholder under this part, the application for the new permit must be made by the date of the sale, transfer, assignment, or lease. Between the date of the change of ownership and the date of the application approval or denial by the department, an

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

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

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

1. Return the permit to the department; and

2. If the permittee is authorized to distribute medical gas, indicate the disposition of such medical gas, including the name, address, and inventory, and provide the name and address of a person to contact regarding access to the records that are required to be maintained under this part. Transfer of ownership of medical gas may be made only to persons authorized to receive medical gas pursuant to this part.

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

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

Section 8. Section 499.83 Florida Statutes, is created to

read:

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

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

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

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

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

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

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

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

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

(e) Being maintained in an orderly condition;

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

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

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

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

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

499.85 Security.—

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

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

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

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

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

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

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

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

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

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

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

499.86 Examination of materials.—

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

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

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

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

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

499.87 Returned, damaged, and outdated medical gas.—

(1) Medical gas that has left the control of a wholesale distributor may be returned to the manufacturer or wholesale distributor from which it was acquired.

(2) Unless medical gas is reprocessed by a manufacturer employing proper and adequate controls to ensure the identity, strength, quality, and purity of the reprocessed medical gas, the gas may not be resold as a medical gas even if its integrity was maintained.

(3) Medical gas that has been subjected to improper conditions, such as a fire, accident, or natural disaster, may not be salvaged or reprocessed.

(4) Medical gas, including its container, which is damaged, misbranded, or adulterated must be quarantined from other medical gases until it is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired. External contamination to a medical gas container or closure system which does not impact the integrity of the medical gas is not considered damage or adulteration for purposes of this subsection. If medical gas is adulterated or misbranded or suspected of being adulterated or misbranded, 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.

(5) A medical gas container that has been opened or used but is not adulterated or misbranded is considered empty and must be quarantined from nonempty medical gas containers and returned to the manufacturer or wholesale distributor from which it was acquired for destruction or reprocessing.

(6) Medical gas, its container, or its associated documentation or labeling that is suspected of being used in criminal activity must be retained until its disposition is authorized by the department or an applicable law enforcement agency.

Section 13. Section 499.88, Florida Statutes, is created to read:

499.88 Due diligence.—

(1) A wholesale distributor shall obtain, before the initial acquisition of medical gas, the following information from the supplying wholesale distributor or manufacturer:

(a) If a manufacturer is distributing to a wholesale distributor, evidence that the manufacturer is registered and the medical gas is listed with the FDA;

(b) If a wholesale distributor is distributing to a wholesale distributor, evidence that the wholesale distributor supplying the medical gas is permitted to distribute medical gas within or into the state;

(c) The name of the contact person for the supplying manufacturer or wholesale distributor; and

(d) Certification that the manufacturer's or wholesale distributor's policies and procedures comply with this part.

(2) A wholesale distributor is exempt from obtaining the information from a manufacturer as required under subsection (1) if the manufacturer is registered with the FDA in accordance with s. 510 of the federal act and provides:

(a) Proof of such registration; and

(b) Proof of inspection within the past 3 years by the FDA or other regulatory body or proof of conformance with industry

standards or guidelines as identified by the department.

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

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

499.89 Recordkeeping.—

(1) A wholesale distributor shall establish and maintain a record of transactions regarding the receipt and the distribution, or other disposition, of medical gases. Such 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). Such records must include all the following information, which need not appear in the same document:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The 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.

(2) The adulteration or misbranding of medical gas.

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

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

(5) The purchase or receipt of 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.

(6) The 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 of medical oxygen as necessary to protect the health, safety, or welfare of a patient in his or her home.

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

(8) 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.

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

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

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

(c) Stolen or obtained by fraud or deceit.

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

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

(12) 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.

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

(14) The distribution 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.

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

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

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

499.92 Criminal acts.—

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

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

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

(c) Engages in the wholesale distribution of, and knowingly sells, barters, 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.

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

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

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

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

(3) Property or assets subject to forfeiture under subsection (2) may be seized pursuant to a warrant obtained in the same manner as a search warrant or as otherwise authorized by law and held until the case against the defendant is adjudicated. Moneys ordered to be forfeited 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.

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

499.93 Inspections.—

(1) The department may require a facility that engages in the manufacture 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 laws of this state.

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

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

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

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

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

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

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

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

Section 20. Section 499.95, Florida Statues, is created to read:

499.95 Enforcement and construction of this part.—

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

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

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

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

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

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

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

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

499.003 Definitions of terms used in this part.—As used in this part, the term:

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

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

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

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

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

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

(14)~~(15)~~ "Department" means the Department of Business and Professional Regulation.

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

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

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

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

and that does not achieve any of its principal intended purposes

through chemical action within or on the body of humans or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(16)~~(17)~~ "Distribute" or "distribution" means to sell; offer to sell; give away; transfer, whether by passage of title, physical movement, or both; deliver; or offer to deliver. The term does not mean to administer or dispense and does not include the billing and invoicing activities that commonly follow a wholesale distribution transaction.

(17)~~(18)~~ "Drop shipment" means the sale of a prescription drug from a manufacturer to a wholesale distributor, where the wholesale distributor takes title to, but not possession of, the prescription drug, and the manufacturer of the prescription drug ships the prescription drug directly to a chain pharmacy warehouse or a person authorized by law to purchase prescription drugs for the purpose of administering or dispensing the drug, as defined in s. 465.003.

(18)~~(19)~~ "Drug" means an article that is:

(a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of those publications;

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

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

(d) Intended for use as a component of any article specified in paragraph (a), paragraph (b), or paragraph (c), and

includes active pharmaceutical ingredients, but does not include devices or their nondrug components, parts, or accessories. For purposes of this paragraph, an "active pharmaceutical ingredient" includes any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or other animals.

(19)~~(20)~~ "Establishment" means a place of business which is at one general physical location and may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. Where multiple buildings are under common exclusive ownership, operation, and control, an intervening thoroughfare does not affect the contiguous nature of the buildings. For purposes of permitting, each suite, unit, floor, or building must be identified in the most recent permit application.

(20)~~(21)~~ "Federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. ss. 301 et seq.; 52 Stat. 1040 et seq.

(21)~~(22)~~ "Freight forwarder" means a person who receives prescription drugs which are owned by another person and designated by that person for export, and exports those prescription drugs.

(22)~~(23)~~ "Health care entity" means a closed pharmacy or any person, organization, or business entity that provides diagnostic, medical, surgical, or dental treatment or care, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(32) "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.

(46) ~~"Prescription medical oxygen" means oxygen USP which is a drug that can only be sold on 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.~~

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

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

manufacturers in the previous year; and

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

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

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

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

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

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

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

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

purchased without a prescription.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(54)~~(55)~~ "Wholesale distributor" means 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 23. Paragraph (a) of subsection (1) of section 409.9201, Florida Statutes, is amended to read:

409.9201 Medicaid fraud.—

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

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

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

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

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

(9)

(c)1. Chiropractic physicians may adjust, manipulate, or treat the human body by manual, mechanical, electrical, or natural methods; by the use of physical means or physiotherapy, including light, heat, water, or exercise; by the use of acupuncture; or by the administration of foods, food concentrates, food extracts, and items for which a prescription is not required and may apply first aid and hygiene, but chiropractic physicians are expressly prohibited from prescribing or administering to any person any legend drug except as authorized under subparagraph 2., from performing any surgery except as stated herein, or from practicing obstetrics.

2. Notwithstanding the prohibition against prescribing and administering legend drugs under subparagraph 1. or s. 499.82(7)(c) ~~s. 499.01(2)(m)~~, pursuant to board rule chiropractic physicians may order, store, and administer, for emergency purposes only at the chiropractic physician's office or place of business, prescription medical oxygen and may also order, store, and administer the following topical anesthetics in aerosol form:

a. Any solution consisting of 25 percent ethylchloride and 75 percent dichlorodifluoromethane.

b. Any solution consisting of 15 percent dichlorodifluoromethane and 85 percent trichloromonofluoromethane.

However, this paragraph does not authorize a chiropractic physician to prescribe medical oxygen as defined in chapter 499.

Section 25. Subsection (3) of section 465.0265, Florida Statutes, is amended to read:

465.0265 Centralized prescription filling.—

(3) The filling, delivery, and return of a prescription by one pharmacy for another pursuant to this section may ~~shall~~ not be construed as the filling of a transferred prescription as described ~~set forth~~ in s. 465.026 or as a wholesale distribution as defined ~~set forth~~ in s. 499.003 ~~s. 499.003(54)~~.

Section 26. Subsection (1), paragraphs (a), (c), (g), (m), (n), and (o) of subsection (2), and subsection (5) of section 499.01, Florida Statutes, are amended to read:

499.01 Permits.—

(1) Before ~~Prior to~~ operating, a permit is required for each person and establishment that intends to operate as:

(a) A prescription drug manufacturer;

(b) A prescription drug repackager;

(c) A nonresident prescription drug manufacturer;

(d) A prescription drug wholesale distributor;

(e) An out-of-state prescription drug wholesale distributor;

(f) A retail pharmacy drug wholesale distributor;

(g) A restricted prescription drug distributor;

(h) A complimentary drug distributor;

(i) A freight forwarder;

(j) A veterinary prescription drug retail establishment;

(k) A veterinary prescription drug wholesale distributor;

(l) A limited prescription drug veterinary wholesale distributor;

~~(m) A medical oxygen retail establishment;~~

~~(n) A compressed medical gas wholesale distributor;~~

~~(o) A compressed medical gas manufacturer;~~

(m) ~~(p)~~ An over-the-counter drug manufacturer;

(n) ~~(q)~~ A device manufacturer;

(o) ~~(r)~~ A cosmetic manufacturer;

(p) ~~(s)~~ A third party logistics provider; or

(q) ~~(t)~~ A health care clinic establishment.

(2) The following permits are established:

(a) *Prescription drug manufacturer permit.*—A prescription drug manufacturer permit is required for any person that is a manufacturer of a prescription drug and that manufactures or distributes such prescription drugs in this state.

1. A person that operates an establishment permitted as a prescription drug manufacturer may engage in wholesale distribution of prescription drugs manufactured at that establishment and must comply with all of the provisions of this part, except s. 499.01212, and the rules adopted under this part, except s. 499.01212, which apply to a wholesale distributor.

2. A prescription drug manufacturer must comply with all appropriate state and federal good manufacturing practices.

3. A blood establishment, as defined in s. 381.06014, operating in a manner consistent with the provisions of 21 C.F.R. parts 211 and 600-640, and manufacturing only the prescription drugs described in s. 499.003(53)(d) ~~s. 499.003(54)(d)~~ is not required to be permitted as a prescription drug manufacturer under this paragraph or to register products under s. 499.015.

(c) *Nonresident prescription drug manufacturer permit.*—A

nonresident prescription drug manufacturer permit is required for any person that is a manufacturer of prescription drugs, unless permitted as a third party logistics provider, located outside of this state or outside the United States and that engages in the wholesale distribution in this state of such prescription drugs. Each such manufacturer must be permitted by the department and comply with all of the provisions required of a wholesale distributor under this part, except s. 499.01212.

1. A person that distributes prescription drugs for which the person is not the manufacturer must also obtain an out-of-state prescription drug wholesale distributor permit or third party logistics provider permit pursuant to this section to engage in the wholesale distribution of such prescription drugs. This subparagraph does not apply to a manufacturer as defined in s. 499.003(30)(e) ~~s. 499.003(31)(c)~~.

2. Any such person must comply with the licensing or permitting requirements of the jurisdiction in which the establishment is located and the federal act, and any product wholesaled into this state must comply with this part. If a person intends to import prescription drugs from a foreign country into this state, the nonresident prescription drug manufacturer must provide to the department a list identifying each prescription drug it intends to import and document approval by the United States Food and Drug Administration for such importation.

(g) *Restricted prescription drug distributor permit.*—

1. A restricted prescription drug distributor permit is required for:

a. Any person located in this state who engages in the

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

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

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

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

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

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

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

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

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

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

sub-subparagraph 1.b.

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

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

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

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

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

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

~~4. Prescription medical oxygen sold by a medical oxygen~~

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

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

~~(o) *Compressed medical gas manufacturer permit.* 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.~~

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

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

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

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

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

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

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

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

The prescription drug distributor is exempt from the product

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

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

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

(2) SECURITY.—

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

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

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

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

499.01211 Drug Wholesale Distributor Advisory Council.—

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

at least once each calendar quarter. Staff for the council shall be provided by the department. The council shall consist of 12 ~~11~~ members who shall serve without compensation. The council shall elect a chairperson and a vice chairperson annually.

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

(a) 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 ~~s. 499.003(47)~~.

(b) 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 ~~s. 499.003(52)~~.

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

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

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

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

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

(3) The Compressed Gas Association shall appoint one person

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

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

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

499.01212 Pedigree paper.—

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

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

1. The quantity, dosage form, and strength of the prescription drugs.

2. The lot numbers of the prescription drugs.

3. The name and address of each owner of the prescription drug and his or her signature.

4. Shipping information, including the name and address of each person certifying delivery or receipt of the prescription drug.

5. An invoice number, a shipping document number, or another number uniquely identifying the transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(c) The fee for a compressed medical gas manufacturer~~

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

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

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

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

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

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

499.05 Rules.—

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

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

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

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

499.051 Inspections and investigations.—

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

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

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

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

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

receive, respond to, and resolve complaints and violations.

Section 35. Section 499.066, Florida Statutes, is amended to read:

499.066 Penalties; remedies.—In addition to other penalties and other enforcement provisions:

(1) The department may institute such suits or other legal proceedings as are required to enforce any provision of this chapter ~~part~~. If it appears that a person has violated any provision of this chapter ~~part~~ for which criminal prosecution is provided, the department may provide the appropriate state attorney or other prosecuting agency having jurisdiction with respect to such prosecution with the relevant information in the department's possession.

(2) If any person engaged in any activity covered by this chapter ~~part~~ violates any provision of this chapter ~~part~~, any rule adopted under this chapter ~~part~~, or a cease and desist order as provided by this chapter ~~part~~, the department may obtain an injunction in the circuit court of the county in which the violation occurred or in which the person resides or has its principal place of business, and may apply in that court for such temporary and permanent orders as the department considers necessary to restrain the person from engaging in any such activities until the person complies with this chapter ~~part~~, the rules adopted under this chapter ~~part~~, and the orders of the department authorized by this chapter ~~part~~ or to mandate compliance with this chapter ~~part~~, the rules adopted under this chapter ~~part~~, and any order or permit issued by the department under this chapter ~~part~~.

(3) The department may impose an administrative fine, not

to exceed $5,000 per violation per day, for the violation of any provision of this chapter ~~part~~ or rules adopted under this chapter ~~part~~. Each day a violation continues constitutes a separate violation, and each separate violation is subject to a separate fine. All amounts collected pursuant to this section shall be deposited into the Professional Regulation Trust Fund and are appropriated for the use of the department in administering this chapter ~~part~~. In determining the amount of the fine to be levied for a violation, the department shall consider:

(a) The severity of the violation;

(b) Any actions taken by the person to correct the violation or to remedy complaints; and

(c) Any previous violations.

(4) The department shall deposit any rewards, fines, or collections that are due the department and which derive from joint enforcement activities with other state and federal agencies which relate to this chapter ~~part~~, chapter 893, or the federal act, into the Professional Regulation Trust Fund. The proceeds of those rewards, fines, and collections are appropriated for the use of the department in administering this chapter ~~part~~.

(5) The department may issue an emergency order immediately suspending or revoking a permit if it determines that any condition in the establishment presents a danger to the public health, safety, and welfare.

(6) The department may issue an emergency order to immediately remove from commerce and public access any drug, device, or cosmetic, if the department determines that the drug,

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

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

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

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

(1) CEASE AND DESIST ORDERS.—

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

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

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

3. A violation of any rule of the department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

any false representation; or

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

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

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

adjudication withheld.

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

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

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

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

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

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,

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 mortgagee, 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]

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[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.

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[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.

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LEGISLATIVE ACTION

Senate . 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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subparagraph 2.

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

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

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

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

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

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


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

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

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

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

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

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

9. Any roominghouse, boardinghouse, or other living or

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

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

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

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

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

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

509.221 Sanitary regulations.—

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

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

509.241 Licenses required; exceptions.—

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

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

509.242 Public lodging establishments; classifications.—

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

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establishment satisfies the following criteria:

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

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

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

(d) ~~(c)~~ *Vacation rental.*—A vacation rental is any unit or group of units in a condominium~~,~~ or cooperative~~, or timeshare plan~~ or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment and that is not a timeshare project.

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

(f) ~~(e)~~ *Transient apartment.*—A transient apartment is a building or complex of buildings in which more than 25 percent

of the units are advertised or held out to the public as available for transient occupancy.

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

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

509.251 License fees.—

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

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months or less prior to such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.

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

(b) A license renewal filed with the division within 30 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law. A license renewal filed with the division more than 30 but not more than 60 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $100, in addition to the renewal fee and any other fees required by law.

Section 7. Subsection (1) of section 712.05, Florida Statutes, is amended to read:

712.05 Effect of filing notice.—

(1) A ~~Any~~ person claiming an interest in land or a homeowners' association desiring to preserve a ~~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 written notice~~, in writing,~~ in accordance with this chapter. Such ~~the provisions~~


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~~hereof, which~~ notice preserves ~~shall have the effect of so preserving~~ such claim of right or such covenant or restriction or portion of such covenant or restriction for up to ~~a period of not longer than~~ 30 years after filing the notice ~~same~~ unless the notice is filed again ~~filed~~ as required in this chapter ~~herein~~. A person's ~~No~~ disability or lack of knowledge of any kind may not ~~on the part of anyone shall~~ delay the commencement of or suspend the running of the ~~said~~ 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of a ~~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 at least ~~not less than~~ 7 days before ~~prior to~~ such meeting. The homeowners' association or clerk of the circuit court is not required to provide notice other than as provided under s. 712.06(3). The preceding sentence is intended to clarify existing law.

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Section 8. Subsection (13) of section 718.110, Florida Statutes, is amended to read:

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.—

(13) An amendment that prohibits ~~prohibiting~~ unit owners from renting their units or altering the duration of the rental term or that specifies or limits ~~specifying or limiting~~ the number of times unit owners are entitled to rent their units during a specified period does not apply ~~applies only~~ to unit owners who voted against ~~consent to~~ the amendment. However, such amendment applies to unit owners who consented to the amendment, who failed to cast a vote, or ~~and unit owners~~ who acquired ~~acquire~~ title to their units after the effective date of the ~~that~~ amendment.

Section 9. Subsection (5), paragraph (j) of subsection (11), and paragraph (c) of subsection (12) of section 718.111, Florida Statutes, are amended, and paragraph (f) is added to subsection (12) of that section, to read:

718.111 The association.—

(5) RIGHT OF ACCESS TO UNITS.—

(a) The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit ~~or units~~.

(b)1. In addition to the association's right of access in paragraph (a) and regardless of whether authority is provided in the declaration or other recorded condominium documents, an

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association, at the sole discretion of the board, may enter an abandoned unit to inspect the unit and adjoining common elements; make repairs to the unit or to the common elements serving the unit, as needed; repair the unit if mold or deterioration is present; turn on the utilities for the unit; or otherwise maintain, preserve, or protect the unit and adjoining common elements. For purposes of this paragraph, a unit is presumed to be abandoned if:

a. The unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or

b. No tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

2. Except in the case of an emergency, an association may not enter an abandoned unit until 2 days after notice of the association's intent to enter the unit has been mailed or hand delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to a unit owner who has consented to receive notice by electronic transmission.

3. Any expense incurred by an association pursuant to this paragraph is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116, and the association may use its lien authority provided by s. 718.116 to enforce collection of the expense.

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4. The association may petition a court of competent jurisdiction to appoint a receiver and may lease out an abandoned unit for the benefit of the association to offset against the rental income 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, and reasonable attorney fees.

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(j) Any portion of the condominium property that must be insured by the association against property loss pursuant to paragraph (f) which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. In the absence of an insurable event, responsibility for reconstruction, repair, or replacement shall be by the association or by the unit owners, as determined by the provisions of the declaration or bylaws. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or

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replacement of any portion of the condominium property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property losses as a common expense if the property losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property was settled or resolved with finality, or denied because it was untimely filed.

(12) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments


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to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

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3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and <u>all</u> telephone <u>numbers</u> ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone number from the directory by so requesting in writing to the association. <u>An owner may consent in writing to the disclosure of other contact information described in this subparagraph.</u> The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(f) An outgoing board or committee member must 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 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

Section 10. Paragraphs (b) and (c) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(b) *Quorum; voting requirements; proxies.*—

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members is a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)4., decisions shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, unit

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owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. A voting interest or consent right allocated to a unit owned by the association may not be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), a proxy, limited or general, may not be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding this subparagraph, unit owners may vote in person at unit owner meetings. This subparagraph does not limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association.

3. Any proxy given is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of the first meeting for which it was given and may be revoked~~. Every proxy is revocable~~ at any time at the pleasure of

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the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken or to create a quorum.

5. A ~~If any of the~~ board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present ~~members meet by telephone conference, those board or committee members may be counted toward obtaining a quorum and may vote by telephone~~. A ~~telephone~~ speaker must be used so that the conversation of such ~~those~~ members may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must


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specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose ~~of the board, but not later than 60 days after the receipt of the petition, shall place the item on the agenda~~. An ~~Any~~ item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. However, written notice of a ~~any~~ meeting at which a nonemergency special assessment ~~assessments,~~ or an ~~at which~~ amendment to rules regarding unit use~~,~~ will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium or association property where all notices of board meetings must ~~are to~~ be posted. If there is no condominium property or association property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting ~~to the owner of each unit~~. In lieu of or in addition to the physical posting of the notice on the

condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular or special assessments against unit owners are to be considered ~~for any reason~~ must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association’s attorney, with respect to proposed or pending


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litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

Section 11. Paragraph (a) of subsection (1) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, 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, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present parcel owner's liability for unpaid assessments, interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process is limited to those amounts that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

Section 12. Section 718.707, Florida Statutes, is amended

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to read:

718.707 Time limitation for classification as bulk assignee or bulk buyer.—A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2016 ~~2015~~. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Section 13. Paragraph (c) of subsection (2) and subsection (4) of section 719.104, Florida Statutes, are amended, and paragraph (e) is added to subsection (4) of that section, to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A

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unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic

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copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit

card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone number from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(e) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board


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within 5 days after the election. The division shall impose a civil penalty as set forth in s. 719.501(1)(d) against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(4) FINANCIAL REPORT.—

(a) Within 90 ~~60~~ days following the end of the fiscal or calendar year or annually on such date as ~~is otherwise~~ provided in the bylaws of the association, the board of administration ~~of the association~~ shall prepare and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. 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, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The division shall adopt rules setting forth uniform accounting principles, standards, and reporting requirements ~~mail or furnish by personal delivery to each unit owner 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~~. ~~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;~~


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~~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.~~

(b) Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete financial statement according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statement shall be as follows:

1. An association with total annual revenues between $150,000 and $299,999 shall prepare a compiled financial statement.

2. An association with total annual revenues between $300,000 and $499,999 shall prepare a reviewed financial statement.

3. An association with total annual revenues of $500,000 or more shall prepare an audited financial statement ~~The division shall 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~~. ~~The financial statements shall be~~


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~~delivered within 90 days following the end of the previous fiscal year or annually on such other date as provided in the bylaws. The rules of the division 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).~~

The requirement to have the financial statement ~~statements~~ compiled, reviewed, or audited does not apply to an association ~~associations~~ if a majority of the voting interests of the association present at a duly called meeting of the association have voted ~~determined for a fiscal year~~ to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of ~~the~~ operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years ~~This subsection does not apply to a cooperative that consists of 50 or fewer units~~.

(c)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the

financial statement required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.

3. A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security; professional and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

(d) If at least 20 percent of the unit owners petition the board for a greater level of financial reporting than that required by this section, the association shall duly notice and hold a meeting of members within 30 days after receipt of the petition to vote on raising the level of reporting for that fiscal year. Upon approval by a majority of the voting interests represented at a meeting at which a quorum of unit owners is present, the association shall prepare an amended budget or shall 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. In addition, the association shall provide within 90 days after the meeting or the end of the fiscal year, whichever occurs later:

1. A compiled, reviewed, or audited financial statement, if the association is otherwise required to prepare a report of cash receipts and expenditures;


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2. A reviewed or audited financial statement, if the association is otherwise required to prepare a compiled financial statement; or

3. An audited financial statement, if the association is otherwise required to prepare a reviewed financial statement.

(e) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

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

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

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

Section 14. Paragraph (a) of subsection (1) of section 719.106, Florida Statutes, is amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(a) *Administration.*—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, except in the

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case of cooperatives having five or fewer units, in which case in not-for-profit corporations, the board shall consist of not fewer than three members. In the absence of provisions to the contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. A person who has been suspended or removed by the division under this chapter, 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. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is suspended from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer. A person who has been convicted of any felony in this state or in

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any United States District 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 5 years as of the date such person seeks election to the board. 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.

3.~~2.~~ When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the board from recovering attorney ~~attorney's~~ fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may, through its board of administration, adopt reasonable rules and regulations regarding the frequency and manner of responding to the unit owners' inquiries, one of which may be that the association is obligated to respond to only one

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written inquiry per unit in any given 30-day period. In such case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

Section 15. Subsection (1) of section 719.108, Florida Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(1) A unit owner, regardless of how title is acquired, including, without limitation, a purchaser at a judicial sale, shall be liable for all rents and assessments coming due while the unit owner is in exclusive possession of a unit. In a voluntary transfer, the unit owner in exclusive possession shall be jointly and severally liable with the previous unit owner for all unpaid rents and assessments against the previous unit owner for his or her share of the common expenses up to the time of the transfer, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process without prejudice to the rights of the unit owner in exclusive possession to recover from the previous unit owner the amounts paid by the unit owner in exclusive possession therefor. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present parcel owner's liability for unpaid rents and assessments, interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process is limited to those amounts that accrued before the association acquired title to the delinquent property through foreclosure or by deed in

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lieu of foreclosure.

Section 16. Section 719.128, Florida Statutes, is created to read:

719.128 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the cooperative documents, and consistent with s. 617.0830, the board of administration, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the cooperative, may exercise the following powers:

(a) Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the cooperative property, or any other means the board deems appropriate under the circumstances.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association’s principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include turning on or shutting off elevators; electricity; water, sewer, or security systems; or air

conditioners for association buildings.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine any portion of the cooperative property unavailable for entry or occupancy by unit owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine whether the cooperative property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Require the evacuation of the cooperative property in the event of a mandatory evacuation order in the area where the cooperative is located. If a unit owner or other occupant of a cooperative fails to evacuate the cooperative property for which the board has required evacuation, the association is immune from liability for injury to persons or property arising from such failure.

(j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the cooperative property, regardless of whether the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of a unit owner, for items or

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services for which the owner is otherwise individually responsible, but which are necessary to prevent further damage to the cooperative property. In such event, the unit owner on whose behalf the board has contracted is responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 719.108 to enforce collection of the charges. Such items or services may include the drying of the unit, the boarding of broken windows or doors, and the replacement of a damaged air conditioner or air handler to provide climate control in the unit or other portions of the property.

(l) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the cooperative documents, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the cooperative documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

Section 17. Paragraph (c) of subsection (5) of section 720.303, Florida Statutes, is amended to read:

720.303 Association powers and duties; meetings of board;

official records; budgets; financial reporting; association funds; recalls.—

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a

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parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil

or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone number from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact

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information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Any electronic security measure that is used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Section 18. Paragraph (b) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members. Further, if a copy of the proposed amendment had been previously provided to the members before the vote of the members on the amendment and the proposed amendment was not changed before the vote of the members, the association may, in lieu of providing a copy of the amendment, provide notice that the amendment was adopted, provide in the notice the official book and page number or

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instrument number of the recorded amendment, and provide notice that a copy of the amendment is available at no charge to the member upon written request to the association. The copies and notice described herein may be provided electronically to those owners who have consented to receive notice electronically.

Section 19. Paragraph (b) of subsection (2) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

(2)(b) A parcel owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. This liability is without prejudice to any right the present parcel owner may have to recover any amounts paid by the present owner from the previous owner. For the purposes of this paragraph, the term "previous owner" shall not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present parcel owner's liability for unpaid assessments, interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process is limited to those amounts ~~any unpaid assessments~~ that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

Section 20. Section 720.316, Florida Statutes, is created to read:

720.316 Association emergency powers.—

(1) To the extent allowed by law, unless specifically

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prohibited by the declaration or other recorded governing documents, and consistent with s. 617.0830, the board of directors, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the association, may exercise the following powers:

(a) Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the association property, or any other means the board deems appropriate under the circumstances.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include, but is not limited to, turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the association property

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unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the association property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the association property.

(j) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the declaration or other recorded governing documents, levy special assessments without a vote of the owners.

(k) Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the declaration or other recorded governing documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to

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mitigate further damage and make emergency repairs.

Section 21. This act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to residential properties; amending s. 509.013, F.S.; replacing reference to timeshare plan with timeshare project; amending s. 509.032, F.S.; providing that timeshare projects are not subject to annual inspection requirements; amending s. 509.221, F.S.; providing that certain public lodging establishment requirements do not apply to timeshare projects; amending s. 509.241, F.S.; providing a condominium association that does not include any units classified as a timeshare project is not required to apply for or receive a public lodging establishment license; amending s. 509.242, F.S.; providing a definition of the term "timeshare project"; deleting the reference to timeshare plans in the definition of the term "vacation rental"; amending s. 509.251, F.S.; providing that timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application; amending s. 712.05, F.S.; clarifying existing law relating to marketable record title; amending s. 718.110, F.S.; providing that an

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amendment to a declaration relating to rental condominium units does not apply to unit owners who vote against the amendment; amending s. 718.111, F.S.; providing authority to an association to inspect and repair abandoned condominium units; providing conditions to determine if a unit is abandoned; providing a mechanism for an association to recover costs associated with maintaining an abandoned unit; providing that in the absence of an insurable event, the association or unit owners are responsible for repairs; providing that an owner may consent in writing to the disclosure of certain contact information; requiring an outgoing condominium association board or committee member to relinquish all official records and property of the association within a specified time; providing a civil penalty for failing to relinquish such records and property; amending s. 718.112, F.S.; providing that a board or committee member's participation in a meeting via real-time videoconferencing, Internet-enabled videoconferencing, or similar electronic or video communication counts toward a quorum and that such member may vote as if physically present; prohibiting the board from voting via e-mail; amending s. 718.116 F.S.; revising the liabilities of the unit owner and the previous owner; excluding specified association from certain liability; limiting the present owner's liability; amending s. 718.707, F.S.; extending the date by which a condominium parcel must be acquired in


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order for a person to be classified as a bulk assignee or bulk buyer; amending s. 719.104, F.S.; providing that an owner may consent in writing to the disclosure of certain contact information; requiring an outgoing cooperative association board or committee member to relinquish all official records and property of the association within a specified time; providing a civil penalty for failing to relinquish such records and property; providing dates by which financial reports for an association must be completed; specifying that members must receive copies of financial reports; requiring specific types of financial statements for associations of varying sizes; providing exceptions; providing a mechanism for waiving or increasing financial reporting requirements; amending s. 719.106, F.S.; providing for suspension from office of a director or officer who is charged with one or more of certain felony offenses; providing procedures for filling such vacancy or reinstating such member under specific circumstances; providing a mechanism for a person who is convicted of a felony to be eligible for board membership; amending s. 719.108, F.S.; revising the liabilities of the unit owner and the previous unit owner; excluding specified association from certain liability; limiting the liability of the present owner; creating s. 719.128, F.S.; providing emergency powers of a cooperative association; amending s. 720.303, F.S.; providing that an owner may consent in writing to the disclosure of certain

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contact information; amending s. 720.306, F.S.; providing an exception to the need for the association to provide copies of an amendment to members; amending s. 720.3085, F.S.; revising the liabilities of the parcel owner and the previous parcel owner; limiting the liability of the present parcel owner; creating s. 720.316, F.S.; providing emergency powers of a homeowners' association; providing an effective date.

By Senator Ring

29-00577C-14 2014798__

A bill to be entitled

An act relating to real and personal property; amending s. 712.05, F.S.; clarifying existing law relating to marketable record title; amending s. 718.110, F.S.; providing that an amendment to a declaration related to rental condominium units does not apply to unit owners who vote against the amendment; amending s. 718.111, F.S.; authorizing an association to inspect and repair abandoned condominium units; specifying criteria under which a unit is presumed abandoned; providing a mechanism for an association to recover costs associated with maintaining an abandoned unit; requiring an outgoing condominium association board or committee member to relinquish all official records and property of the association within a specified time; providing a civil penalty for failing to relinquish such records and property; amending s. 718.112, F.S.; providing that a board or committee member's participation in a meeting via real-time videoconferencing or similar electronic or video communication counts toward a quorum and that such member may vote as if physically present; authorizing the board to communicate via e-mail; prohibiting the board from voting via e-mail; amending s. 718.116, F.S.; expanding costs that a unit owner is jointly and severally responsible for paying with the previous owner; providing that the term "previous owner" does not include certain associations; limiting the unit owner's liability for specified costs to

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29-00577C-14 2014798__

amounts accrued before the association acquired title to the delinquent property; amending s. 718.707, F.S.; extending the date by which a parcel must be acquired in order for a person to be classified as a bulk assignee or bulk buyer; amending s. 719.104, F.S.; requiring an outgoing cooperative association board or committee member to relinquish all official records and property of the association within a specified time; providing a civil penalty for failing to relinquish such records and property; providing dates by which financial reports for an association must be completed; specifying that members must receive copies of financial reports; requiring specific types of financial statements for associations of varying sizes; providing exceptions; providing a mechanism for waiving or increasing financial reporting requirements; amending s. 719.106, F.S.; providing that certain persons are ineligible for board membership; suspending a director or officer from office if he or she is charged with a specified felony; providing procedures for filling such vacancy or for reinstating a member under certain circumstances; providing a mechanism to allow a person convicted of a felony to be eligible for board membership; requiring the notice of a board meeting to specify all agenda items; requiring the board to place an item on the agenda if a specified number of voting interests petition the board; amending s. 719.108, F.S.; expanding costs that a unit owner is jointly and

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severally responsible for paying with the previous owner; providing that the term "previous owner" does not include certain associations; limiting the unit owner's liability for specified costs to amounts accrued before the association acquired title to the delinquent property; creating s. 719.128, F.S.; providing emergency powers of a cooperative association; amending s. 720.3085, F.S.; expanding costs that a parcel owner is jointly and severally responsible for paying with the previous owner; limiting the parcel owner's liability for specified costs to amounts accrued before the association acquired title to the delinquent property; creating s. 720.316, F.S.; providing emergency powers of a homeowners' association; providing an effective date.

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

Section 1. Subsection (1) of section 712.05, Florida Statutes, is amended to read:

712.05 Effect of filing notice.—

(1) A ~~Any~~ person claiming an interest in land or a homeowners' association desiring to preserve a ~~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 written notice~~, in writing,~~ in accordance with this chapter. Such ~~the provisions hereof, which~~ notice preserves ~~shall have the effect of so~~

~~preserving~~ such claim of right or such covenant or restriction or portion of such covenant or restriction for up to ~~a period of not longer than~~ 30 years after filing the notice ~~same~~ unless the notice is filed again ~~filed~~ as required in this chapter ~~herein~~. A person's ~~No~~ disability or lack of knowledge of any kind may not ~~on the part of anyone shall~~ delay the commencement of or suspend the running of the ~~said~~ 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of a ~~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 at least ~~not less than~~ 7 days before ~~prior to~~ such meeting. The homeowners' association or clerk of the circuit court is not required to provide notice other than as provided under s. 712.06(3). The preceding sentence is intended to clarify existing law.

Section 2. Subsection (13) of section 718.110, Florida

Statutes, is amended to read:

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.—

(13) An amendment that prohibits ~~prohibiting~~ unit owners from renting their units or altering the duration of the rental term or that specifies or limits ~~specifying or limiting~~ the number of times unit owners are entitled to rent their units during a specified period does not apply ~~applies only~~ to unit owners who voted against ~~consent to~~ the amendment. However, such amendment applies to unit owners who consented to the amendment, who failed to cast a vote, or ~~and unit owners~~ who acquired ~~acquire~~ title to their units after the effective date of the ~~that~~ amendment.

Section 3. Subsection (5) of section 718.111, Florida Statutes, is amended, and paragraph (f) is added to subsection (12) of that section, to read:

718.111 The association.—

(5)(a) RIGHT OF ACCESS TO UNITS.—The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit or units.

(b)1. Notwithstanding paragraph (a), and regardless of whether authority is provided in the declaration or other recorded governing documents, an association, at the sole discretion of the board, may enter an abandoned unit to inspect the unit and adjoining common elements; make repairs to the unit

or to the common elements serving the unit, as needed; repair the unit if mold or deterioration is present; turn on the power for the unit; or otherwise maintain, preserve, or protect the unit and adjoining common elements. For purposes of this paragraph, a unit is presumed to be abandoned if:

a. The unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or

b. No tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

2. Except in the case of an emergency, an association may not enter an abandoned unit until 48 hours after notice of the association's intent to enter the unit has been delivered to the owner at the address of the owner as reflected in the records of the association.

3. Any expense incurred by an association pursuant to this paragraph is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116, and the association may use its lien authority provided under s. 718.116 to enforce collection of the expense.

4. The association may petition a court of competent jurisdiction to appoint a receiver and may lease out an abandoned unit for the benefit of the association to offset against the rental income, 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, and reasonable attorney fees.

(12) OFFICIAL RECORDS.—

(f) An outgoing board or committee member must 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 5 days after the election. An outgoing board or committee member who fails to relinquish such records and property is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

Section 4. Paragraphs (b) and (c) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(b) *Quorum; voting requirements; proxies.*—

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members is a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)4., decisions shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted

by the division. A voting interest or consent right allocated to a unit owned by the association may not be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), a proxy, limited or general, may not be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding this subparagraph, unit owners may vote in person at unit owner meetings. This subparagraph does not limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association.

3. Any proxy given is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of the first meeting for which it was given and may be revoked~~. Every proxy is revocable~~ at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee

may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken or to create a quorum.

5. A ~~If any of the~~ board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present ~~members meet by telephone conference, those board or committee members may be counted toward obtaining a quorum and may vote by telephone~~. A ~~telephone~~ speaker must be used so that the conversation of such ~~those~~ members may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. A member may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent

of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose ~~of the board, but not later than 60 days after the receipt of the petition, shall place the item on the agenda~~. An ~~Any~~ item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. However, written notice of a ~~any~~ meeting at which a nonemergency special assessment ~~assessments,~~ or an ~~at which~~ amendment to rules regarding unit use~~,~~ will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium or association property where all notices of board meetings must ~~are to~~ be posted. If there is no condominium property or association property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting ~~to the owner of each unit~~. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable

television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular or special assessments against unit owners are to be considered ~~for any reason~~ must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing

personnel matters.

Section 5. Paragraph (a) of subsection (1) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments that ~~which~~ come due while he or she is the unit owner. Additionally, 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, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for unpaid assessments, interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process is limited to the amounts that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

Section 6. Section 718.707, Florida Statutes, is amended to read:

718.707 Time limitation for classification as bulk assignee or bulk buyer.—A person acquiring condominium parcels may not be

classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2016 ~~2015~~. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Section 7. Paragraph (e) is added to subsection (2) of section 719.104, Florida Statutes, and subsection (4) of that section is amended, to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(e) An outgoing board or committee member must 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 5 days after the election. The Division of Florida Condominiums, Timeshares, and Mobile Homes shall impose a civil penalty as set forth in s. 719.501(1)(d) against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(4) FINANCIAL REPORT.—

(a) Within 90 ~~60~~ days after ~~following~~ the end of the fiscal or calendar year or annually on such date as ~~is otherwise~~ provided in the bylaws of the association, the board of administration ~~of the association~~ shall prepare and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. 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, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The division shall adopt rules setting forth uniform accounting principles, standards, and reporting requirements ~~mail or furnish by personal delivery to each unit owner 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. 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.~~

(b) Except as set forth in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

1. An association with total annual revenues of between $150,000 and $299,999 shall prepare a compiled financial statement.

2. An association with total annual revenues of between $300,000 and $499,999 shall prepare a reviewed financial statement.

3. An association with total annual revenues of $500,000 or more shall prepare an audited financial statement ~~The division shall 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~~. ~~The financial statements shall 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 rules of the division 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).~~

4. The requirement to have the financial statements compiled, reviewed, or audited does not apply to an association ~~associations~~ if a majority of the voting interests of the association present at a duly called meeting of the association have voted ~~determined for a fiscal year~~ to waive this

requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of ~~the~~ operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held before ~~prior to~~ the end of the fiscal year, and the waiver may ~~shall~~ be effective for only one fiscal year. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years ~~This subsection does not apply to a cooperative that consists of 50 or fewer units~~.

(c)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements required in paragraph (b) unless the declaration or other recorded governing documents provide otherwise.

3. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, as applicable, security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs of building maintenance and repair; insurance costs; administration and

salary expenses; and reserves, if maintained by the association.

(d) If at least 20 percent of the unit owners petition the board for a greater level of financial reporting than that required under this section, the association shall duly notice and hold a meeting of members within 30 days after receipt of the petition to vote on raising the level of reporting for that fiscal year. Upon approval of a majority of the voting interests represented at a meeting at which a quorum of unit owners is present, the association shall prepare an amended budget or shall 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. In addition, the association shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(e) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

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

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial

statement; or

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

Section 8. Paragraphs (a), (c), and (d) of subsection (1) of section 719.106, Florida Statutes, are amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(a) *Administration.*—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, except that in the case of cooperatives having five or fewer units, in which case in not-for-profit corporations, the board shall consist of at least ~~not fewer than~~ three members. In the absence of provisions to the contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board. Unless otherwise provided in the bylaws, the members of the board shall serve

without compensation.

2. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is suspended from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer. 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 5 years as of the date such person seeks election to the board. 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.

3.~~2.~~ When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the

inquiry. The board's response shall ~~either~~ give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days after ~~of~~ its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the board from recovering attorney ~~attorney's~~ fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may, through its board of administration, adopt reasonable rules and regulations regarding the frequency and manner of responding to the unit owners' inquiries, one of which may be that the association is obligated to respond to only one written inquiry per unit in any given 30-day period. In such case, any additional ~~inquiry or~~ inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present must ~~shall~~ be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may

adopt reasonable written rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all board meetings, which notice must specifically identify all agenda items, shall be posted in a conspicuous place upon the cooperative property at least 48 continuous hours preceding the meeting, except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board shall place the item on the agenda at its next regular board meeting or at a special meeting of the board, but no later than 60 days after the petition is received. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. However, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the cooperative property at least ~~not less than~~ 14 days before the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the cooperative property upon which all notices of board meetings shall be posted. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the cooperative property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and

the agenda on a closed-circuit cable television system serving the cooperative association. However, if broadcast notice is used in lieu of a notice posted physically on the cooperative property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. Meetings of a committee to take final action on behalf of the board or to make recommendations to the board regarding the association budget are subject to ~~the provisions of~~ this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to ~~the provisions of~~ this section, unless those meetings are exempted from this section by the bylaws of the association. Notwithstanding any ~~other~~ law to the contrary, the requirement that board meetings and committee meetings be open to the unit owners does not apply to board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice.

(d) *Shareholder meetings.*—There shall be an annual meeting

of the shareholders. All members of the board of administration shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. Any unit owner desiring to be a candidate for board membership must comply with subparagraph 1. The bylaws must provide the method for calling meetings, including annual meetings. Written notice, which must incorporate an identification of agenda items, shall be given to each unit owner at least 14 days before the annual meeting and posted in a conspicuous place on the cooperative property at least 14 continuous days preceding the annual meeting. Upon notice to the unit owners, the board must by duly adopted rule designate a specific location on the cooperative property upon which all notice of unit owner meetings are posted. In lieu of or in addition to the physical posting of the meeting notice, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the cooperative association. However, if broadcast notice is used in lieu of a posted notice, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual meeting, the notice of the annual meeting must be sent by mail, hand delivered, or electronically

transmitted to each unit owner. An officer of the association must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association, affirming that notices of the association meeting were mailed, hand delivered, or electronically transmitted, in accordance with this provision, to each unit owner at the address last furnished to the association.

1. The board of administration shall be elected by written ballot or voting machine. A proxy may not be used in electing the board of administration in general elections or elections to fill vacancies caused by recall, resignation, or otherwise unless otherwise provided in this chapter.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or transmit, whether by separate association mailing, delivery, or electronic transmission or included in another association mailing, delivery, or electronic transmission, including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the board of administration must give written notice to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in this section, the association shall mail, deliver, or electronically transmit a second notice of election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, the association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election,

to be included with the mailing, delivery, or electronic transmission of the ballot, with the costs of mailing, delivery, or transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets provided by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There is no quorum requirement. However, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any such ballots improperly cast are invalid. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. Any unit owner violating this provision may be fined by the association in accordance with s. 719.303. The regular election must occur on the date of the annual meeting. This subparagraph does not apply to timeshare cooperatives. Notwithstanding this subparagraph, an election and balloting are not required unless more candidates file a notice of intent to run or are nominated than vacancies exist on the board. Any challenge to the election process must be commenced within 60 days after the election results are announced.

b. Within 90 days after being elected or appointed to the board, each new director shall certify in writing to the secretary of the association that he or she has read the

association's bylaws, articles of incorporation, proprietary lease, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Within 90 days after being elected or appointed to the board, in lieu of this written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by an education provider as approved by the division pursuant to the requirements established in chapter 718 within 1 year before or 90 days after the date of election or appointment. The educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary of the association shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

2. Any approval by unit owners called for by this chapter, or the applicable cooperative documents, must be made at a duly noticed meeting of unit owners and is subject to this chapter or

the applicable cooperative documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable cooperative documents or law that ~~which~~ provides for the unit owner action.

3. Unit owners may waive notice of specific meetings if allowed by the applicable cooperative documents or law. If authorized by the bylaws, notice of meetings of the board of administration, shareholder meetings, except shareholder meetings called to recall board members under paragraph (f), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission.

4. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

5. Any unit owner may tape record or videotape meetings of the unit owners subject to reasonable rules adopted by the division.

6. Unless otherwise provided in the bylaws, a vacancy occurring on the board before the expiration of a term 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. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of subparagraph 1. unless the association has opted out of the

statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, the term of a board member appointed or elected under this subparagraph expires at the next annual meeting at which directors are elected ~~shall fill the vacancy for the unexpired term of the seat being filled~~. Filling vacancies created by recall is governed by paragraph (f) and rules adopted by the division.

Notwithstanding subparagraphs (b)2. and (d)1., an association may, by the affirmative vote of a majority of the total voting interests, provide for a different voting and election procedure in its bylaws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

Section 9. Subsections (1), (3), (4), and (9) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(1) A unit owner, regardless of how his or her title has been ~~is~~ acquired, including by purchase~~, without limitation, a purchaser~~ at a foreclosure ~~judicial~~ sale or by deed in lieu of foreclosure, is ~~shall be~~ liable for all ~~rents and~~ assessments that come ~~coming~~ due while he or she is the unit owner ~~is in exclusive possession of a unit~~. Additionally, a ~~In a voluntary transfer, the~~ unit owner is ~~in exclusive possession shall be~~ jointly and severally liable with the previous ~~unit~~ owner for all unpaid ~~rents and~~ assessments that came due ~~against the~~

~~previous unit owner for his or her share of the common expenses~~ up to the time of the transfer, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. This liability is without prejudice to any right the ~~rights of the~~ unit owner may have ~~in exclusive possession~~ to recover from the previous ~~unit~~ owner the amounts paid by the unit owner ~~in exclusive possession therefor~~. For purposes of this subsection, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for unpaid assessments, interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process is limited to those amounts that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

(3) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any ~~costs and~~ reasonable costs and attorney ~~attorney's~~ fees incurred

in collection, and then to the delinquent assessment. The foregoing applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to chapter 687 or s. 719.303(4).

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any authorized administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable costs and attorney ~~attorney's~~ fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. The lien expires if a claim of lien is not filed within 1 year after the date the assessment was due, and the lien does not continue for longer than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced. Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail and:

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by registered or certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by registered or certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing.

(9) The specific purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by s. 719.104(3), approved in accordance with the cooperative documents shall be set forth in a written notice of such assessment sent or delivered to each unit owner. The funds collected pursuant to a special assessment may ~~shall~~ be used only for the specific purpose or purposes set forth in such notice or returned to the unit owners. However, upon completion of such specific purposes, any excess funds shall be considered common surplus and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.

Section 10. Section 719.128, Florida Statutes, is created to read:

719.128 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the cooperative documents, and consistent with s.

617.0830, the board of administration, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in a location in which the cooperative is located, may exercise the following powers:

(a) Conduct board or membership meetings with notice of the meetings and board decisions provided as is practicable, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the cooperative property, or any other means the board deems appropriate under the circumstances.

(b) Cancel and reschedule an association meeting.

(c) Name assistant officers who are not directors. An assistant officer has the same authority during the state of emergency as the executive officer he or she assists if that executive officer is incapacitated or unavailable.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, shutting off elevators; electricity; water, sewer, or security systems; or air conditioners.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the cooperative property unavailable for entry or occupancy by unit owners or their family members, tenants, guests, agents, or invitees to protect

their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the cooperative property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Require the evacuation of the cooperative property in the event of a mandatory evacuation order in the location in which the cooperative is located. If a unit owner or other occupant of a cooperative fails to evacuate the cooperative property for which the board has required evacuation, the association is immune from liability for injury to persons or property arising from such failure.

(j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the cooperative property, regardless of whether the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of a unit owner, for items or services for which the owner is otherwise individually responsible, but which are necessary to prevent further damage to the cooperative property. In such event, the unit owner on whose behalf the board has contracted is responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority

provided by s. 719.108 to enforce collection of the charges. Without limitation, such items or services may include the drying of units, the boarding of broken windows or doors, and the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property.

(l) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the cooperative documents, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the cooperative documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

Section 11. Paragraphs (a) and (b) of subsection (2) of section 720.3085, Florida Statutes, are amended to read:

720.3085 Payment for assessments; lien claims.—

(2)(a) A parcel owner is liable for all assessments that come due while the parcel owner owns the parcel, regardless of how the parcel owner acquired ~~his or her~~ title to the property ~~has been acquired~~, including by purchase at a foreclosure sale ~~or by deed in lieu of foreclosure, is liable for all assessments~~

~~that come due while he or she is the parcel owner~~. ~~The parcel owner's liability for assessments may not be avoided by waiver or suspension of the use or enjoyment of any common area or by abandonment of the parcel upon which the assessments are made.~~

(b) A parcel owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. This liability is without prejudice to any right the present parcel owner may have to recover any amounts paid by the present owner from the previous owner. For the purposes of this paragraph, the term "previous owner" does ~~shall~~ not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present parcel owner's liability for unpaid assessments, interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process is limited to the amounts ~~any unpaid assessments~~ that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

Section 12. Section 720.316, Florida Statutes, is created to read:

720.316 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the governing documents, and consistent with s. 617.0830, the board of directors, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in a location in which the association is located,

may exercise the following powers:

(a) Conduct board or membership meetings with notice of the meetings and board decisions provided as is practicable, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the association property, or any other means the board deems appropriate under the circumstances.

(b) Cancel and reschedule an association meeting.

(c) Name assistant officers who are not directors. An assistant officer has the same authority during the state of emergency as the executive officer he or she assists if that executive officer is incapacitated or unavailable.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the association property unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the

board, determine whether the association property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the association property.

(j) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the governing documents, levy special assessments without a vote of the owners.

(k) Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the governing documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

Section 13. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JEREMY RING
29th District

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

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,

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.; s*ee 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 requirements[13] 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

[13]National 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.

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LEGISLATIVE ACTION

Senate . House

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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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Professional Engineers. The board shall consist of 11 members, nine of whom shall be licensed engineers and two of whom shall be laypersons who are not and have never been engineers or members of any closely related profession or occupation. The members of the board who are licensed engineers must be appointed based on their qualifications to provide expertise and experience to the board at all times in civil engineering, structural engineering, electrical or electronic engineering, mechanical 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) Following the expiration of the initial staggered terms under subsection (3), members of the board ~~Members~~ shall be appointed by the Governor for terms of 4 years each. Professional and technical engineering societies may submit a list of qualified nominees to be considered by the Governor for appointment.

(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.

Section 2. Paragraph (e) of subsection (1) of section

471.013, Florida Statutes, is amended to read:

471.013 Examinations; prerequisites.—

(1)

(e) Every applicant who is qualified to take the fundamentals examination or the principles and practice examination shall be allowed to take either examination three times, notwithstanding the number of times either examination has been previously failed. If an applicant fails either examination three times, the board shall require the applicant to complete additional college-level education courses or a board-approved relevant examination review course as a condition of future eligibility to take that examination. If the applicant is delayed in taking the examination due to reserve or active duty service in the United States Armed Forces or National Guard, the applicant is allowed an additional two attempts to take the examination before the board may require additional college-level education or review courses.

Section 3. Paragraph (a) of subsection (5) of section 471.015, Florida Statutes, is amended to read:

471.015 Licensure.—

(5)(a) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination when such applicant has~~:~~

~~1. Has~~ held a valid professional engineer's license in another state for 15 years and has had 20 years of continuous professional-level engineering experience~~;~~

~~2. Has received a doctorate degree in engineering from an institution that has an undergraduate engineering degree program~~

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~~which is accredited by the Accreditation Board for Engineering Technology; or~~

~~3. Has received a doctorate degree in engineering and has taught engineering full time for at least 3 years, at the baccalaureate level or higher, after receiving that degree~~.

Section 4. Effective March 1, 2015, subsection (3) of section 471.017, Florida Statutes, is amended to read:

471.017 Renewal of license.—

(3)(a) The board shall require a demonstration of continuing professional competency of engineers as a condition of license renewal or relicensure. Every licensee must complete 9 continuing education ~~4 professional development~~ hours~~,~~ for each year of the license renewal period, totaling 18 continuing education hours for the license renewal period. For each renewal period for such continuing education:~~, 4~~

1. One hour must ~~hours shall~~ relate to this chapter and the rules adopted under this chapter;

2. One hour must relate to professional ethics; ~~and the remaining 4~~

3. Four hours must ~~shall~~ relate to the licensee's area of practice; and

4. The remaining hours may relate to any topic pertinent to the practice of engineering.

Continuing education hours may be earned by presenting or attending seminars, in-house or nonclassroom courses, workshops, or professional or technical presentations made at meetings, webinars, conventions, or conferences, including those presented by vendors with specific knowledge related to the licensee's

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area of practice. Up to 4 hours may be earned by serving as an officer or actively participating on a committee of a board-recognized professional or technical engineering society. The 4 hours of continuing education hours relating to this chapter, the rules adopted pursuant to this chapter, and ethics may be earned by serving as a member of the Legislature or as an elected state or local official. The hours required pursuant to s. 471.0195 may apply to any requirements of this section except for those required under subparagraph 1.

(b) The board shall adopt rules that are substantially consistent with the most recent published version of the Continuing Professional Competency Guidelines of the National Council of Examiners for Engineering and Surveying ~~for multijurisdictional licensees for the purpose of avoiding proprietary continuing professional competency requirements~~ and shall allow nonclassroom hours to be credited. The board may, by rule, exempt from continuing professional competency requirements retired professional engineers who no longer sign and seal engineering documents and licensees in unique circumstances that severely limit opportunities to obtain the required continuing education ~~professional development~~ hours.

Section 5. Except as otherwise provided in this act, this act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

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An act relating to engineers; amending s. 471.007, F.S.; revising requirements for membership on the Board of Professional Engineers; authorizing the professional and technical engineering societies to provide a list of qualified nominees for consideration as board member appointments; providing for staggered terms; amending s. 471.013, F.S.; revising requirements for an engineer license applicant who fails the fundamentals examination; authorizing such applicant who is delayed in taking the examination by military service to have additional attempts to take the examination; amending s. 471.015, F.S.; revising requirements for obtaining a licensure by endorsement; amending s. 471.017, F.S.; revising requirements for professional development hours and license renewal for engineers; providing effective dates.

By Senator Stargel

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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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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

examination may ~~shall be allowed to~~ take either examination three times, notwithstanding the number of times either examination has been previously failed. If an applicant fails either examination three times, the board shall require the applicant to complete additional college-level education courses or a relevant examination review course as a condition of future eligibility to take that examination. If the applicant is delayed in taking the examination due to his or her service in the United States Armed Forces, the applicant is allowed two additional attempts to take the examination before the board may require additional college-level education or examination review courses.

Section 3. Subsection (3) of section 471.017, Florida Statutes, is amended to read:

471.017 Renewal of license.—

(3)(a) The board shall require a demonstration of continuing professional competency of engineers as a condition of license renewal or relicensure. Each ~~Every~~ licensee must complete at least 10 ~~4~~ professional development hours~~,~~ for each year of the license renewal period. For each renewal period for such continuing education:

1. Four ~~, 4~~ hours must ~~shall~~ relate to this chapter, ~~and~~ the rules adopted under this chapter, and professional ethics;

2. Four ~~and the remaining 4~~ hours must ~~shall~~ relate to the licensee's area of practice; and

3. The remaining hours may relate to any topic pertinent to the practice of engineering.

Up to 12 hours may be earned by presenting or attending

seminars, in-house courses, workshops, or professional or technical presentations given at meetings, conventions, or conferences, including those presented by vendors with specific knowledge related to the licensee's area of practice. Up to 4 hours may be earned by serving as an officer or actively participating on a committee of the Florida Engineering Society. The courses required under s. 471.0195 may apply to the requirements of this paragraph except the requirement under subparagraph 1.

(b) The board shall adopt rules that are substantially consistent with the Continuing Professional Competency Guidelines of the National Council of Examiners for Engineering and Surveying ~~for multijurisdictional licensees for the purpose of avoiding proprietary continuing professional competency requirements~~ and shall allow nonclassroom hours to be credited. The board may, by rule, exempt from continuing professional competency requirements retired professional engineers who no longer sign and seal engineering documents and licensees in unique circumstances that severely limit opportunities to obtain the required professional development hours.

Section 4. This act shall take effect July 1, 2014.