

Tab 1	SB 630 by Baxley (CO-INTRODUCERS) Hutson, Rodriguez; (Similar to H 00867) Community Associations						
248146	D	S	RCS	RI, Hutson	Delete everything after	02/16 06:08 PM	
Tab 2	SB 148 by Bradley; (Compare to H 00329) Beverage Law						
690554	A	S	RCS	RI, Bradley	Delete L.61 - 224:	02/16 06:08 PM	
714630	AA	S	RCS	RI, Bradley	Delete L.192 - 194:	02/16 06:08 PM	
Tab 3	SB 522 by Diaz; (Compare to CS/H 00219) Vacation Rentals						
940098	D	S	RCS	RI, Diaz	Delete everything after	02/16 06:08 PM	
Tab 4	SPB 7028 by RI; OGSR/Data Processing Software						
Tab 5	SPB 7022 by RI; OGSR/Proprietary Confidential Business Information						
Tab 6	SPB 7032 by RI; OGSR/Prescription Drug Purchase Lists						
Tab 7	SPB 7034 by RI; OGSR/Trade Secrets/Department of Business and Professional Regulation						
Tab 8	SPB 7030 by RI; OGSR/Trade Secrets/Department of Business and Professional Regulation						
Tab 9	SPB 7026 by RI; OGSR/Florida State Boxing Commission						
Tab 10	SPB 7024 by RI; OGSR/Agency Trade Secrets						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Hutson, Chair
Senator Book, Vice Chair

MEETING DATE: Tuesday, February 16, 2021

TIME: 12:30—3:00 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Hutson, Chair; Senator Book, Vice Chair; Senators Albritton, Gruters, Hooper, Passidomo, Rodrigues, Rouson, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE, FL, 32301			
1	SB 630 Baxley (Similar H 867, Compare H 615, H 665, H 1005, S 56, S 872)	Community Associations; Prohibiting insurance policies from providing specified rights of subrogation under certain circumstances; authorizing a condominium association to extinguish discriminatory restrictions; providing requirements for natural gas fuel stations on property governed by condominium associations; authorizing parties to initiate presuit mediation under certain circumstances; revising the allowable uses of certain escrow funds withdrawn by developers, etc. RI 02/16/2021 Fav/CS CA RC	Fav/CS Yeas 9 Nays 0
2	SB 148 Bradley (Compare H 329, S 134)	Beverage Law; Authorizing certain food service establishments to sell or deliver alcoholic beverages for off-premises consumption if specified requirements are met, etc. RI 02/16/2021 Fav/CS CM RC	Fav/CS Yeas 9 Nays 0
3	SB 522 Diaz (Compare CS/H 219)	Vacation Rentals; Preempting the regulation of vacation rentals to the state; prohibiting a local law, ordinance, or regulation from allowing or requiring inspections or licensing of public lodging establishments, including vacation rentals, or public food service establishments; requiring licenses issued by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to be displayed conspicuously to the public inside the licensed establishment; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements, etc. RI 02/16/2021 Fav/CS CM RC	Fav/CS Yeas 6 Nays 3

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Tuesday, February 16, 2021, 12:30—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed bill:			
4	SPB 7028	OGSR/Data Processing Software; Amending a provision relating to an exemption from public records requirements for certain data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret and agency-produced data processing software that is sensitive; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			
5	SPB 7022	OGSR/Proprietary Confidential Business Information; Amending a provision which provides an exemption from public records requirements for proprietary confidential business information submitted by a voice communications services provider to the E911 Board, the Division of Telecommunications within the Department of Management Services, or the Department of Revenue; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			
6	SPB 7032	OGSR/Prescription Drug Purchase Lists; Amending a provision which provides an exemption from public records requirements for trade secrets contained in certain prescription drug purchase lists submitted to the Department of Business and Professional Regulation; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			
7	SPB 7034	OGSR/Trade Secrets/Department of Business and Professional Regulation; Amending a provision which relates to an exemption from public records requirements for trade secrets contained within complaints or pursuant to an investigation of such complaints obtained by the Department of Business and Professional Regulation, which are submitted by permittees relating to the manufacture, repackaging, or distribution of a drug or for a permit or product registration or for the renewal of such permit or product registration; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Tuesday, February 16, 2021, 12:30—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SPB 7030	OGSR/Trade Secrets/Department of Business and Professional Regulation; Amending a provision which relates to an exemption from public records requirements for trade secrets contained in certain information submitted to the Department of Business and Professional Regulation as required by specified provisions relating to medical gas; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			
9	SPB 7026	OGSR/Florida State Boxing Commission; Amending a provision relating to an exemption from public records requirements for proprietary confidential business information obtained through an audit of a promoter's books and records or provided by a promoter to the Florida State Boxing Commission; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			
10	SPB 7024	OGSR/Agency Trade Secrets; Amending a provision abrogating the scheduled repeal of a public records exemption for data, programs, or supporting documentation that is a trade secret held by an agency and which resides or exists internal or external to a computer, a computer system, a computer network, or an electronic device, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
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: CS/SB 630

INTRODUCER: Regulated Industries Committee and Senator Baxley

SUBJECT: Community Associations

DATE: February 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 630 revises the regulation and governance of condominium, cooperative, and homeowners' associations under chs. 718, 719, and 720, F.S., respectively. The bill authorizes condominium, cooperative, and homeowners' associations to extinguish discriminatory restrictions in recorded title transactions.

For condominium associations, the bill:

- Prohibits a unit owner's insurance policy from including rights of subrogation against the association if the association's policy does not provide subrogation rights against the unit owner;
- Provides for the operation of more than one condominium by a condominium association (multicondominium).
- Reduces the time period an association must maintain official records of bids for work, equipment, or services to be performed from seven years to one year after receipt of the bid;
- Permits associations with 150 or more units to make official records available for inspection through an application that can be downloaded to a mobile device;
- Provides that only a board member's service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit;
- Permits associations to electronically transmit the written notice of a meeting;
- Increases the maximum permissible fee an association may charge for the transfer of a unit from \$100 to \$150, and provides for the adjustment of the fee every five years to an amount equal to the total annual increases in the Consumer Price Index during that period;

- Removes the prohibition against an association employing or contracting with any service provider that is owned or operated by a board member or person who has a financial relationship with a board member or officer;
- Permits unit owners to install a charging station for an electric vehicle or a natural gas fuel vehicle on a parking area exclusively designated for use by the unit owner. The unit owner is required to be responsible for the costs related to the installation, maintenance, and removal of the charging station for an electric vehicle or a natural gas fuel vehicle;
- Provides that a condominium developer may expend escrow funds to satisfy actual costs of construction and development, but exclude other specified costs, such as marketing costs;
- Repeals the requirement that the condominium ombudsman must maintain his or her office in Leon County.

For cooperative associations, the bill:

- Provides that an interest in a cooperative unit is an interest in real property; and
- Permits board or committee members to appear and vote by telephone, real-time video conferencing, or similar real-time electronic or video communication.

For homeowners' associations, the bill:

- Permits an association to adopt, by rule, procedures for posting meeting notices and agendas on a website and emailing members meeting notices and agendas;
- Requires sign-in sheets, voting proxies, ballots, and all other papers related to voting to be maintained as official records;
- Makes confidential any information an association obtains in connection to guests visiting homeowners in a gated community;
- Clarifies the situations in which an association is obligated to create or fund association reserve accounts;
- Provides for the prospective application of an amendment to the governing documents that restricts the right to rent a parcel;
- Provides that a change of ownership does not occur for purposes of applying an amendment restricting rental rights when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes a parcel owner; and
- Revises the conditions under which non-developer members of a homeowners' association are entitled to elect the majority of the board, to consistently distinguish between developer members and non-developer members.

For condominium and cooperative associations, the bill:

- Prohibits an association from requiring members to demonstrate any purpose or state any reason for inspecting official records; and
- Provides a process to resolve disputes by initiating presuit mediation as an alternative to mandatory nonbinding arbitration by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation.

For condominium, cooperative, and homeowners' associations, the bill:

- Provides that recall and election disputes are not eligible for mediation and must be arbitrated by the division or filed in court;

- Provides additional emergency powers to respond to injury and to an anticipated declared state of emergency; and
- Clarifies that payment of a fine is due five days after notice of the fine is provided to the unit owner, tenant, or invitee of the unit owner.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Condominium

A condominium is a “form of ownership of real property created under ch. 718, F.S.”¹ Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements and members of the condominium association.² For unit owners, membership in the association is an unalienable right and required condition of unit ownership.³ A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.⁴ A declaration is similar to a constitution in that it:

[S]trictly 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

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.⁶ Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a “board of administration.”⁷ The board of administrators comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.⁸ In litigation, an association's board of directors is in charge of directing attorney actions.⁹

¹ Section 718.103(11), F.S.

² See s. 718.103, F.S.

³ *Id.*

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 718.303(3), F.S.

⁷ Section 718.103(4), F.S.

⁸ Section 718.103(2), F.S.

⁹ Section 718.103(30), F.S.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over condominiums.¹⁰

Cooperative Associations

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

[T]hat 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 owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.¹¹ 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.¹²

The division has limited regulatory authority over cooperatives, including the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.¹³

Homeowners’ Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as 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.¹⁴

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, and 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.”¹⁵ Unless specifically stated to the contrary in the articles of

¹⁰ See s. 718.501, F.S. See *infra*, the *Present Situation* for the proposed revisions to the division’s authority set forth in s. 718.501, F.S.

¹¹ See *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019), *review denied* 2020 WL 3442763 (Fla. 2020).

¹² See ss. 719.106(1)(g) and 719.107, F.S.

¹³ Section 719.501(1), F.S.

¹⁴ See s. 720.302(1), F.S.

¹⁵ Section 720.301(9), F.S.

incorporation, 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.¹⁶

Homeowners' associations are administered by a board of directors whose members are elected.¹⁷ 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 a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.¹⁸ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁹

Homeowners' associations mainly differ from condominiums, in the type of property individually owned. Condominium unit owners essentially own airspace within a building, whereas homeowner association members own a parcel of real property or land.

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, F.S., the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 F.S., are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

For homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.²⁰

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

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 the governance of these community

¹⁶ Section 720.302(5), F.S.

¹⁷ See ss. 720.303 and 720.307, F.S.

¹⁸ See ss. 720.301 and 720.303, F.S.

¹⁹ Section 720.303(1), F.S.

²⁰ See s. 720.306(9)(c), F.S.

associations. The chapters delineate requirements for notices of meetings,²¹ recordkeeping requirements, including which records are accessible to the members of the association,²² and financial reporting.²³ Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Condominium Unit Insurance

Present Situation

A condominium association is required to use its best efforts to maintain insurance for the association, the association property, the common elements, and the condominium property.²⁴ Insurance coverage for the association must insure the condominium property as originally installed and all alterations or additions made to the condominium property.²⁵

Condominium association insurance coverage does not include personal property within a unit or a unit’s limited common elements, floor, wall, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments. Such property and insurance is the responsibility of the unit owner.²⁶

A condominium unit owner’s insurance policy must conform to s. 627.714, F.S.,²⁷ which requires that an individual unit owner’s residential property insurance policy must state that the coverage afforded by the policy is excess coverage over the amount recoverable under any policy covering the same property.²⁸

An association is not obligated to pay for reconstruction or repairs to an improvement, benefiting a specific unit and installed by a unit owner.²⁹

Alternatively, s. 718.111(11)(j), F.S., provides that any portion of the condominium property that must be insured by the association against property loss under s. 718.111(11)(f), F.S., which is damaged by an insurable event, shall be reconstructed, repaired, or replaced as necessary by the association as a common expense to the association. Under s. 718.111(j)1., F.S., the

²¹ See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

²² See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

²³ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

²⁴ Section 718.111(11), F.S.

²⁵ Section 718.111(11)(f), F.S.

²⁶ Section 718.111(11)(f)3., F.S.

²⁷ Section 718.111(11)(g), F.S.

²⁸ Section 627.714(4), F.S.

²⁹ Section 718.111(11)(n), F.S.

subrogation³⁰ rights of an insurer are not compromised if the unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by an association's 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.

Section 718.111(11)(j)3., F.S., provides that an association may reimburse the unit owner without the waiver of any subrogation rights, if:

- The cost of repair or reconstruction is the unit owner's responsibility;
- The association has collected the cost of such repair or reconstruction from the unit owner; and
- The association from insurance proceeds reimburses the unit owner.

Section 718.111(j), F.S., does not provide a condominium unit owner or their insurer a private right of action against another unit owner or their insurer for property damage caused by the latter's intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association.³¹

In 2010, the Legislature repealed a prohibition against an insurance policy issued to an individual unit owner providing rights against the condominium association.³²

Fannie Mae mortgage lending guidelines require that the insurance policy for a condominium project waive the right of subrogation against unit owners.³³

Effect of Proposed Changes

The bill amends s. 627.714(4), F.S., to provide that a condominium unit owner's insurance policy may not provide subrogation rights against the association operating the condominium in which the property is located if the association's insurance policy does not provide a subrogation right against the unit owners.

Multicondominiums

Present Situation

Section 718.103(20), F.S., defines the term "multicondominium" to mean a real estate development-containing two or more condominiums, all of which are operated by the same association.

³⁰ The term "subrogation" is described as a legal right held by insurance carriers to legally pursue a third party that caused an insurance loss to the insured. This is done in order to recover the amount of the claim paid by the insurance carrier to the insured for the loss. See Investopedia.com, *Subrogation*, at <https://www.investopedia.com/terms/s/subrogation.asp> (last visited Feb. 3, 2021).

³¹ See *Universal Property & Casualty Insurance Company v. Loftus*, 276 So.3d 849 (Fla. 4th DCA 2019)

³² Chapter 2010-174, s. 9, Laws of Fla. (amending s. 718.111(1)(g), F.S.)

³³ Fannie Mae, Selling Guide, Fannie Mae Single Family, Special Requirements for Condo Projects, p. 903, Dec. 4, 2019, available at <https://www.fanniemae.com/content/guide/sel120419.pdf> (last visited Feb. 16, 2021).

Section 718.405, F.S., provides for the operation of more than one condominium by a condominium association.

Effect of Proposed Changes

The bill amends s. 718.103(20), F.S., to revise the definition of the term “multicondominium” to provide that the property is “real property” instead of “a real estate development.”

The bill creates s. 718.405(5), F.S., to provide that a multicondominium association may adopt a consolidated or combined declaration of condominium if such declaration complies with the requirements for the creation of a condominium, does not merge the condominiums, or change the legal descriptions of the condominium parcels, unless accomplished in accordance with law. The bill provides that this section is intended to clarify existing law and applies to associations existing on July 1, 2021.

Official Records – Condominium, Cooperative, and Homeowners’ Associations

Present Situation

Florida law specifies the official records that condominium, cooperative, and homeowners’ associations must maintain.³⁴ Generally, the official records must be maintained in Florida for at least seven years.³⁵ Certain of these records must be accessible to the members of an association.³⁶ Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.³⁷

Condominium associations with 150 or more units are required to post digital copies of specified documents on their website.³⁸

Effect of Proposed Changes

The bill amends ss. 718.111(12), 718.501, 719.104(2)(c), and 720.303(5), F.S., to revise the official records requirements for condominiums, cooperatives, and homeowners’ associations.

For condominium associations, the bill:

- Reduces the time period bids for work performed and bids for materials, equipment, or services must be maintained by associations to one year after receipt. Under current law, such records must be maintained for seven years.³⁹

³⁴ See ss. 718.111(12), 719.104(2), 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁵ See ss. 718.111(12)(b), 719.104(2)(b), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁶ See ss. 718.111(12)(a), 719.104(2)(a), and 720.303(5), F.S., , relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁷ See ss. 718.111(12)(c), 719.104(2)(c), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁸ Section 718.111(12)(g), F.S.

³⁹ Sections 719.104(2)(a)9.d. and 720.303(4)(i), F.S., provide an identical provision for cooperative and homeowners’ associations, respectively.

- Permits condominium associations with 150 or more to post digital copies of specified documents on an application that can be downloaded on a mobile device.
- Permits a renter of a condominium to inspect and copy the declaration of condominium. Current law only permits a renter to inspect and copy the association's bylaws and rules.
- Clarifies that a renter only has the right to inspect copies of the declaration of condominium, association bylaws, and rules.

The bill amends s. 718.111(12)(g), F.S., to permit condominium associations managing an association with 150 or more units, which do not contain timeshare units, to make digital copies of specified documents available to members through an application that may be downloaded to a mobile device as an alternative to the requirement posting copies of the documents on a website.

Regarding the official records requirements for condominium and cooperative associations, the bill prohibits condominium and cooperative associations from requiring a unit owner to demonstrate a purpose or state a reason for the inspection.⁴⁰

Regarding homeowners' associations, the bill amends s. 720.303(4), F.S., to:

- Designate as an official record all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by owners in the association's official records.⁴¹ Under the bill, these records must be maintained for one year after the date of the election, vote, or meeting to which the document relates.
- Make confidential any information an association obtains in connection to guests visiting homeowners in a gated community.

Extinguishment of Discriminatory Restrictions

Present Situation

Section 712.065(2), F.S., provides that a discriminatory restriction is not enforceable in this state. All discriminatory restrictions contained in any title transaction recorded in this state are unlawful, are unenforceable, and are declared null and void. Any discriminatory restriction contained in a previously recorded title transaction is extinguished and severed from the recorded title transaction, and the remainder of the title transaction remains enforceable and effective.

Section 712.065(1), F.S., defines the term "discriminatory restriction" to mean: a provision in a title transaction recorded in this state which restricts the ownership, occupancy, or use of any real property in this state by any natural person on the basis of a characteristic that has been held, or is held after September 4, 2020, by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability.

⁴⁰ Section 720.303(5)(c), F.S., provides a comparable provision for homeowners' associations.

⁴¹ Sections 718.111(12)(a)12. and 719.104(2)(a)10., F.S., provide an identical provision for condominium and cooperative associations, respectively.

A discriminatory restriction appearing in a covenant or restriction affecting the parcel in a property owners' association⁴² may be removed by an amendment approved by a majority vote of the board of directors of the respective property owners' association or an owners' association in which all owners may voluntarily join, notwithstanding any other requirements for approval of an amendment of the covenant or restriction.⁴³

Effect of Proposed Changes

The bill amends ss. 718.112(1), 719.106(3), and 720.3075, F.S., relating to the bylaws of condominium, cooperative, and homeowners' associations, respectively, to authorize these associations to extinguish a discriminatory restriction in the manner provided under s. 712.065, F.S.

Condominiums Term Limits for Board Members

Present Situation

The terms of all condominium association board members expire at the annual meeting, unless:

- It is a timeshare or nonresidential condominium;
- The staggered term of a board member does not expire until a later annual meeting; or
- All members' terms would otherwise expire but there are no candidates.

Board members may serve terms longer than one year if permitted by the bylaws or articles of incorporation. A board member may not serve more than eight consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.⁴⁴

Section 718.112(2)(d)2., F.S., was amended by ch. 2018-96, s. 2, Laws of Fla., to allow board members to serve longer than one year if permitted by the bylaws or article of incorporation, but provided that the board members could not serve more than eight consecutive years. The effective date of the change was July 1, 2018. The division issued a declaratory statement on September 12, 2018, that:

If at the time of the next scheduled election the current board member has served on the association board for eight consecutive years, the board member would be ineligible to serve unless there are fewer eligible candidates than vacant seats on the board or unless that candidate is

⁴² Section 712.01(5), F.S., defines the term "property owners' association" to mean "a homeowners' association as defined in s. 720.301, [F.S.] a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction that is imposed on the parcels."

⁴³ Section 712.065(3), F.S.

⁴⁴ *Id.*

approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election.⁴⁵

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2., F.S., to provide that only service on the board of a condominium association that occurs on or after July 1, 2018, may be used when calculating a board member's term limit.

Condominium Meeting Notices

Present Situation

A condominium association must provide written notice for the annual meeting of the unit owners. The notice must include an agenda. Current law does not specify whether the requirement to include an agenda applies to all meetings of unit owners, including the annual meeting. The notice must be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting. The notice must also be posted in a conspicuous place on the condominium property for at least 14 continuous days before the annual meeting. Instead of posting the notice in a conspicuous place, a condominium may repeatedly broadcast the notice and agenda on a closed-circuit cable television system serving the association.⁴⁶

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)3., F.S., to extend the notice and agenda requirements to all meetings of the unit owners.

Condominium Voting Process

Present Situation

At least 60 days before a scheduled election, a condominium association must mail, deliver, or electronically transmit to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda for the unit owner meeting, the association must mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates.⁴⁷

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)4.a., F.S., to require the second notice of the election be sent to all unit owners entitled to vote not less than 14 days, or more than 34 days, before the date of the election.

⁴⁵ *In re: Petition for Declaratory Statement, Apollo Condominium Association, Inc.*, DS 2018-035, Division of Florida Condominiums, Timeshares, and Mobile Homes, September 12, 2018.

⁴⁶ Section 718.112(2)(d)3., F.S.

⁴⁷ Section 718.112(2)(d)4., F.S.

Condominium Transfer Fees

Present Situation

Condominium associations may charge unit owners costs or fees in connection with the sale, mortgage, lease, sublease, or other transfer of a unit, if:

- The fee is limited to \$100 or less;
- The fee is authorized in the association's governing documents; and
- The association is required to approve the transfer.⁴⁸

For example, if a unit owner utilizes their property as a vacation rental and has three separate guest leases during a month, the condominium may charge up to \$300 in transfer fees if the above requirements are met under s. 718.112(2)(i), F.S.

Also, condominium associations may require a potential renter to provide the association with a security deposit equivalent to one month of rent. The association must place the security deposit in an escrow account maintained by the association.⁴⁹

Effect of Proposed Changes

The bill amends s. 718.112(2)(i), F.S., to increase the maximum permissible transfer fee from \$100 to \$150. The bill provides that spouses, or a parent or parents and any dependent children, are considered one applicant for transfer purposes. The bill requires that a transfer fee must be adjusted every five years in an amount equal to the total annual increases occurring in the Consumer Price Index during that five-year period. Under the bill, the DBPR must periodically calculate the fees, rounded to the nearest dollar, and publish the adjusted amounts on its website.

Condominium Boards and Conflicts of Interest

Present Situation

Section 718.3027, F.S., requires an officer or director of a condominium association (that is not a timeshare condominium association), to disclose any financial interest of the officer or director (or such person's relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. Section 718.3027(2), F.S., requires the board of a condominium association to approve a contract for services or other transactions by an affirmative vote of two-thirds of all other directors present.

Section 718.112(2)(p), F.S., also prohibits an association (that is not a timeshare condominium association) from employing or contracting with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity⁵⁰ by blood or marriage of a board member or officer. This prohibition does not apply to a service provider in which a board

⁴⁸ Section 718.112(2)(i), F.S.

⁴⁹ *Id.*

⁵⁰ Relatives of the third degree of consanguinity include great grandparent, aunt/uncle, niece/nephew, and great grandchild. See:

https://www.uab.edu/humanresources/home/images/M_images/Relations/PDFS/FAMILY%20MEMBER%20CHART.pdf (last visited Feb. 11, 2021).

member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.

Section 718.112(2)(p), F.S., appears to conflict with ss. 718.3027 and 720.3033, F.S., because those sections permit financial relationships that may create a conflict of interest when the financial interests are disclosed, and the contract or transaction is approved by the board or the members, as appropriate. However, s. 718.112(2)(p), F.S., expressly prohibits such potential conflicts of interest even if the financial interest is disclosed or approved by the board or the members.

Effect of Proposed Changes

The bill repeals s. 718.112(2)(p), F.S., relating to conflicts of interests between officers or directors of a condominium association and service providers. This revision does not prevent certain financial interests from being considered a conflict of interest under s. 718.3027, F.S.

Condominium Alternative Fuel Charging Station

Present Situation

A condominium association may not prohibit a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The electricity charges for the station must be separately metered and payable by the unit owner.⁵¹ Current law does not expressly permit a unit owner to install a natural gas fuel station.

Natural gas fuel is any liquefied petroleum gas product, compressed natural gas product, or a combination of these products used in a motor vehicle.⁵² The term includes all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.⁵³ However, the term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electricity generation.⁵⁴

Effect of Proposed Changes

The bill amends s. 718.113(8), F.S., to include an exclusively designated parking area as a location where the association may not prohibit a unit owner from installing an electric vehicle charging station.

The bill also amends s. 718.113(8), F.S., to permit a unit owner to install a natural gas fuel station. A unit owner installing a natural gas fuel station is subject to the same requirements as an owner installing an electric vehicle charging station. The unit owner is responsible for complying with all federal, state, or local laws or regulations applicable to the installation, maintenance, or removal of an electric vehicle charging or natural gas charging station. The unit owner, or his or

⁵¹ Section 718.113(8), F.S.

⁵² Section 206.9951(2), F.S.

⁵³ *Id.*

⁵⁴ *Id.*

her successor, who installs a natural gas fuel station, is responsible for the cost for the supply and storage of the natural gas fuel station.

The bill also allows a unit owner to use an embedded meter to separately meter the fuel used on an electric vehicle or natural gas fuel vehicle charging station.

The bill also amends s. 718.121, F.S., to include a natural gas stations in the prohibition against filing a lien against a condominium association for labor or materials related to the installation of an electric vehicle charging station.

Alternative Dispute Resolution

Present Situation

Condominiums

Section 718.1255, F.S., provides an alternative dispute resolution process for certain disputes between unit owners and condominium associations. The division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration. Section 718.1255, F.S., states that the purpose of mandatory nonbinding arbitration is to provide efficient, equitable, and inexpensive decisions when disputes arise between owners and associations. An arbitrator's final order is not binding unless the parties agree to be bound, or the parties fail to file a petition for a trial de novo in the circuit court within 30 days after the mailing of the arbitrator's final order. A petition for arbitration tolls any applicable statute of limitations for the dispute, and, if there is a trial de novo, an arbitrator's decision is admissible as evidence.⁵⁵

Non-binding arbitration is required for disagreements that involve the authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements.⁵⁶ Additionally, disputes pertaining to the board of directors' failure to properly conduct elections, give adequate notice of meetings, properly conduct meetings and provide access to association books and records must also be litigated in non-binding arbitration before Florida law grants unit owners access to the court system.⁵⁷ These types of disputes can be characterized as enforcement actions because they involve enforcing the terms and conditions of the condominium governing documents.

The division does not have jurisdiction to arbitrate the following disputes between a unit owner and an association that involve:⁵⁸

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or another removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or

⁵⁵ Section 718.1225(4), F.S.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

The filing fee for an arbitration petition is \$50.⁵⁹

As a component of mandatory non-binding arbitration, any party may petition the arbitrator to refer the case to mediation.⁶⁰ The purpose of mediation is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.⁶¹ The dispute remains in arbitration, but the parties can select a mediator from a list of paid and volunteer mediators provided by the arbitrator.⁶² The parties must share equally in the cost of the mediation.⁶³ If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates unless all parties agree in writing to continuing the arbitration proceedings, in which case the arbitrator's decision will be binding or nonbinding as the parties have agreed.⁶⁴

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center as provided in s. 44.201, F.S.

Cooperatives

In cooperative associations, disputes, including recall election disputes, are subject the alternative dispute resolution requirements and procedures applicable to condominiums in s. 718.1255, F.S.⁶⁵

Homeowners' Associations

Section 720.311, F.S., provides an alternative dispute resolution program for certain homeowner association disputes. An aggrieved party in a homeowners' association dispute initiates the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in s. 720.311, F.S., and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.⁶⁶

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees.

⁵⁹ Section 718.1255(4)(a), F.S.

⁶⁰ Section 718.1255(4)(e), F.S.

⁶¹ Section 718.1255(4)(g), F.S.

⁶² Section 718.1255(4)(e), F.S.

⁶³ Section 718.1255(4)(h), F.S.

⁶⁴ *Id.*

⁶⁵ Sections 719.1255 and 719.106(1)(f), F.S.

⁶⁶ *Id.*

Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.⁶⁷

If mediation is not successful in resolving all the disputed issues between the parties, the parties may proceed to civil court or may elect to enter into binding or non-binding arbitration.⁶⁸

Effect of Proposed Changes

The bill amends s. 718.1255(4)(a), F.S., to provide that prior to court litigation, a party to a condominium dispute may either initiate presuit mediation as provided above or may petition the division for nonbinding arbitration. This provision also states that arbitration shall be binding on the parties if all parties agree in a writing filed in arbitration.

The bill also creates s. 718.1255(5), F.S., to require a party to a condominium dispute to initiate either arbitration or presuit mediation following the procedure for the mediation of homeowners' association disputes in s. 720.311, F.S., before beginning court litigation. Under the bill, parties in a condominium dispute may use the mediation process to resolve a dispute without first initiating the arbitration process.

Under the bill, recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for presuit mediation and must be arbitrated by the division or filed directly with a court of competent jurisdiction.

The bill amends ss. 718.112(2)(k) and 719.106(1)(l), F.S., to require that a condominium association's bylaws provide for mandatory dispute resolution. It deletes the requirement that an association's bylaws must provide for mandatory nonbinding arbitration.

Emergency Powers – Condominiums and Cooperatives

Present Situation

Unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, ss. 718.1265(1), 719.128(1), and 720.316(10), F.S., provide the emergency powers of condominium, cooperative, and homeowners' association boards, respectively, in response to damage for which a state of emergency declared pursuant to s. 252.36, F.S.,⁶⁹ in the locale in which the community association is located. The emergency powers include the authority to give meeting notices by any practical means, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on association property.

The current emergency authority does not apply to a condominium, cooperative, and homeowners' association board's response to injury or to an anticipated declared state of emergency.

⁶⁷ Section 720.311(2)(b), F.S.

⁶⁸ Section 720.311(2)(c), F.S.

⁶⁹ Section 252.36, F.S., provides the Governor's emergency management powers, including the power to issue executive orders and proclamations.

Condominium, cooperative, and homeowners' association boards are also authorized to implement a disaster plan, determine whether any portions of the condominium property are unavailable for entry or occupancy, and to consult with emergency management officials. The associations are also authorized to mitigate damages.

Effect of Proposed Changes

The bill amends ss. 718.1265(1), 719.128(1), and 720.316(10, F.S., to the extent that a condominium, cooperative, and homeowners' association board's emergency authority, respectively, to apply its response to injury and to an anticipated declared state of emergency. The bill also authorizes these boards to conduct board meetings, committee meetings, membership meetings, and elections, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication. The bill also authorizes these associations to give meeting notices by electronic transmission.

The bill also clarifies the term "emergency" to have the same meaning as in s. 252.34(4), F.S., which defines emergency to mean "any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."

The bill authorizes condominium and cooperative associations to consult with public health officials when determining whether any portions of the condominium property are unavailable for entry or occupancy.

The bill creates ss. 718.1265(3), 719.128(3), and 720.306(3), F.S., to provide that condominium, cooperative, or homeowners' associations, respectively, may not during a declared state of emergency prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements for the purposes of ingress to and egress from the unit. In addition, these associations may not prohibit access that is necessary for the sale, lease, or other transfer of title of a unit; or the habitability of the unit or for the health and safety of such persons.

However, these associations may deny access based on a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention prohibiting access to the unit. Any access is subject to reasonable restrictions adopted by the association.

Pre-Closing Sales and Reservation Deposits

Present Situation

Under s. 718.202(3), F.S., if the contract for sale of the condominium unit provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the escrow account for use in the actual construction and development of the condominium property. However, the escrow funds may not be used for salaries, commissions, or expenses of salespersons, or for advertising purposes.

Effect of Proposed Changes

The bill amends s. 718.202(3), F.S., to provide that escrow funds may be used for the actual costs incurred by the developer in construction and development of the condominium property. The bill defines the term “actual costs” to include, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property. The bill prohibits the use of the escrow funds for marketing or promotional purposes, loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs.

Condominium and Homeowners’ Associations Fines***Present Situation***

Condominium, cooperative, and homeowners’ associations may levy fines against an owner, occupant, or a guest of an owner for failing to comply with any provision in the association’s declaration, bylaws, or rules. A fine imposed by a condominium or cooperative association may not exceed \$100 per violation, and the total amount of a fine may not exceed \$1,000.⁷⁰ However, a fine imposed by a homeowners’ association may exceed \$1,000 in the aggregate if the association’s governing documents authorize the fine.⁷¹ A fine imposed by a condominium or cooperative may not become a lien against the unit.⁷² A fine by a homeowners’ association of less than \$1,000 may not become a lien against the parcel.⁷³

An association’s board may not impose a fine or suspension unless it gives at least 14 days written notice of the fine or suspension, and an opportunity for a hearing. The hearing must be held before a committee of unit owners who are not board members or residing in a board member’s household. The role of the committee is to determine whether to confirm or reject the fine or suspension.⁷⁴

A fine approved by the committee is due five days after the date of the committee meeting. The condominium or cooperative must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.⁷⁵

Effect of Proposed Changes

The bill amends ss. 718.303(3) and 720.305(2), F.S., to provide that a fine imposed by a condominium or homeowners’ association, respectively, is due five days after notice of an approved fine is sent to the unit or parcel owner and if applicable, to any tenant, licensee, or invitee of the owner. Current law provides that payment of the fine is due five days after the committee meeting at which the fine is approved.

⁷⁰ Sections 718.303(3) and 719.303(3), F.S.

⁷¹ Section 720.305(2), F.S.

⁷² Sections 718.303(3) and 719.303(3), F.S.

⁷³ Sections 720.305(2), F.S.

⁷⁴ Sections 718.303(3)(b) and (c), 719.303(3)(b) and (c), and 720.305(2)(b) and (c), F.S.

⁷⁵ *Id.*

The bill also changes the term “occupant” to “tenant.”

Division of Florida Condominiums, Timeshares, and Mobile Homes

Present Situation

The division administers the provisions of ch. 718, for condominium associations. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control.⁷⁶ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.⁷⁷ After control of the condominium is transferred from the developer to the unit owners, the division has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to association records.⁷⁸

Section 718.501(1)(j), F.S., requires the division to provide training and educational programs to condominium association board members and unit owners. The division may review and approve education and training programs offered by providers and is required to maintain a current list of approved programs and providers and make the list available to board members and unit owners in a reasonable and cost-effective manner.

Effect of Proposed Changes

The bill amends s. 718.501, F.S., to expand the division’s authority to include the maintenance of the association’s official records. The division’s current authority is limited to issues related to the unit owner’s access to records.

Condominium Ombudsman

Present Situation

The office of the ombudsman within the division is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. Also, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.⁷⁹

The ombudsman also acts as a liaison between the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.⁸⁰

The ombudsman is required to maintain his or her principal office in Leon County.⁸¹

⁷⁶ Sections 718.501(1), F.S.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Sections 718.5011 and 718.5012, F.S.

⁸⁰ *Id.*

⁸¹ Section 718.5014, F.S.

Effect of Proposed Changes

The bill amends s. 718.5014, F.S., to delete the requirement that the condominium ombudsman maintain his or her principal office in Leon County.

Cooperative Property

Present Situation

A corporation owns the building and land comprising a cooperative. A person who buys into a cooperative does not receive title to a unit or any portion of the cooperative's building or land. Instead, the purchaser receives shares of the cooperative association and leases a unit from the association.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.⁸² Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.⁸³ Real property is anything permanent, fixed, and immovable, such as land or a building. At common law, a 99-year leasehold was not considered an interest in real property. However, a long-term leasehold interest is taxed in the same manner as a fee interest, so case law commonly declares long-term leaseholds to be an interest in real property for taxation purposes.⁸⁴

In Florida, a cooperative is treated as real property for some homestead purposes. Although the general definition of a homestead, including for taxation purposes, follows the common-law rule that requires an interest in real property, the Florida Constitution specifically extends the exemption to a cooperative unit.⁸⁵ Florida's homestead laws apply to a cooperative the exemption from forced sale by creditors⁸⁶ and the exemption from ad valorem taxation. However, a cooperative is not subject to Florida's homestead protections on devise and descent.⁸⁷

The Condominium Act in ch. 718, F.S., specifically provides that “[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold.” Thus, an ownership interest in a condominium is expressly converted by statute into an interest in real property, but there is no corresponding provision in the Cooperative Act.⁸⁸ The Third District Court of Appeal has recognized a need for clarification of this type of ownership interest.⁸⁹ In 2019, the Third District Court of Appeal certified a question of great public importance to the Florida Supreme Court concerning homestead protections for

⁸² *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996)

⁸³ Am. Jur. 2d Property § 18.

⁸⁴ *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); See generally, The Florida Bar, *Practice Under Florida Probate Code Chapter 19* (9th ed. 2017).

⁸⁵ FLA. CONST. art. VII, s. 6(a) provides: “The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner’s or member’s proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.”

⁸⁶ Sections 222.01, and 222.05, F.S.

⁸⁷ *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); *In re Estate of Wartels*, 357 So.2d 708 (Fla. 1978).

⁸⁸ Section 718.106(1), F.S.

⁸⁹ *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008)

devise and descent of cooperative property. However, the Florida Supreme Court denied the appeal because the lower court had not declared invalid a state statute or a provision of the State Constitution.⁹⁰

Effect of the Proposed Changes

The bill amends the definition of “unit” in s. 719.103(25), F.S., to provide that an interest in a cooperative unit is an interest in real property.

Cooperative Association Meetings

Present Situation

When a board or committee member of a cooperative association participates in a meeting by telephone conference, that board or committee member’s participation by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by unit owners present at a meeting.⁹¹

Effect of Proposed Changes

The bill amends s. 719.106(1)(b)5., F.S., to provide that a cooperative association board member or committee member who attends a meeting by telephone, real time video conferencing, or similar real-time electronic or video communication counts toward a quorum and may vote as if physically present.⁹²

Governing Documents – Homeowners’ Associations

Present Situation

Section 720.301(8), F.S., defines the term “governing documents” to mean:

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto;
- The articles of incorporation and bylaws of the homeowners’ association and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

Effect of Proposed Changes

The bill amends s. 720.301(8), to revise the definition of the term “governing documents” to remove rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

⁹⁰ *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019), review denied 2020 WL 3442763 (Fla. 2020).

⁹¹ Section 719.106(1)(b)5., F.S.

⁹² Section 718.112(2)(b)5., F.S., provides a comparable provision for condominium associations.

Homeowners' Associations Electronic Meeting Notices

Present Situation

A homeowners' association is required to notify all board members at least 48 hours before the meeting by posting a meeting notice in a conspicuous place on the association's property. Alternatively, the notice may be mailed, hand-delivered, or electronically transmitted at least seven days before the meeting.⁹³

Meeting notices must be posted 14 days before any meeting where a nonemergency special assessment or an amendment to the rules regarding unit use is to be considered.⁹⁴

Instead of posting or mailing notices, a homeowners' association with more than 100 members may broadcast notices on a closed-circuit cable television system for at least four times every broadcast hour of each day that a posted notice is otherwise required.⁹⁵

Effect of Proposed Changes

The bill amends s. 720.303(2), F.S., to authorize an additional method for homeowners' associations with more than 100 members to provide meeting notices by authorizing the board to adopt, by rule, a procedure for conspicuously posting a meeting notice and agenda on a website serving the association or an application on a mobile device. The rule must:

- Require the association to send an electronic notice to members with a hypertext link to the website where the notice is posted or the mobile device application; and
- Require the notice on the association's website or mobile device application to be posted for at least as long as the physical posting of a meeting notice is required.⁹⁶

Homeowners' Association Developers and Reserve Accounts

Present Situation

Under s. 720.303(6)(a), F.S., homeowners' associations are required to prepare an annual budget that sets out the annual operating expenses and reflects the estimated revenues, expenses, and surplus or deficit associations anticipate for the fiscal year. The annual budget must also set out separately all fees or charges paid for by the association for recreational amenities. The association must provide members with a copy of the annual budget.⁹⁷

In addition to annual operating expenses, the budget may include reserve accounts. The reserve accounts are maintained for capital expenditures and deferred maintenance costs the association is responsible for paying. If reserve accounts are not funded adequately and an association is liable for paying the costs of repair or maintenance of a capital improvement, the deficit may

⁹³ Section 720.303(2)(c), F.S. Sections 718.112(2) and 719.106(1), F.S., provide comparable notice requirements for condominium and cooperative associations.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Sections 718.112(2)(c) and 719.106(1)(c), F.S., provide comparable notice requirements for meetings in condominium and cooperative associations, respectively.

⁹⁷ Section 720.303(6)(a), F.S.

result in a special assessment imposed on members.⁹⁸ A statement in conspicuous type must be included in each financial state indicating that budget does not provide for reserve accounts.

During the development of a community to be governed by a homeowners' association, the developer may be obligated to pay operating expenses and association assessments on lots the developer owns when the developer controls the association board. However, under s. 720.308(1)(b), F.S., a developer has the right to avoid paying these expenses and assessments if the developer elects to fund the difference between assessments received from lot owners and the operating expenses incurred that exceed the assessment receivable. This is referred to as deficit funding.

In the 2016 case, *Mackenzie v. Centex Homes*,⁹⁹ Florida's Fifth District Court of Appeal (Fifth DCA) ruled that it was unclear whether s. 720.308(1)(b), F.S., excuses a developer from paying only its share of association operating expenses and assessments or excuses the developer from paying all other contributions including reserve funds. Although the governing documents of an association may specify whether reserve funds are included in operating expenses and assessment, the Fifth DCA found that the developer's governing documents were ambiguous on the matter.

Relying on canons of statutory interpretation, the Fifth DCA ruled that Centex (the developer) was liable for funding the reserve accounts of the association because the developer-controlled association initially established a reserve account and did not defund or waive the reserve accounts according to the procedure outlined in s. 720.303(6), F.S. To comply with s. 720.303(6), F.S., a developer choosing to provide deficit funding to an association, instead of funding reserve accounts, must waive reserve funding at a properly noticed meeting of the homeowners' association and note the absence of reserve funds in a conspicuous location in the financial reports and annual budgets provided to homeowners and prospective buyers.

Effect of Proposed Changes

The bill amends ss. 720.303(6)(c) and (d), F.S., to clarify the conditions in which a developer is obligated to fund the reserve accounts of a homeowners' association.

The bill revises the requirement that the statement that must be included in each financial report if the budget does not fund reserve accounts to also state that the budget does not "fully fund" reserve accounts.

The bill includes the declaration of covenants, articles, or bylaws of an association as one of the basis for the funding of reserve accounts.

The bill also removes language that deems an association to have provided for reserve accounts funds if the developer initially establishes the accounts.

⁹⁸ *Id.* at (b)

⁹⁹ *Mackenzie v. Centex Homes*, 208 So.3d 790 (Fla. 5th DCA 2016).

Homeowners' Associations Governing Document Amendments

Present Situation

Amendment Notices

Section 720.306(1)(b), F.S., requires that, unless otherwise provided in the governing documents or required by law, the governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. The association is required to provide copies of the amendment to the members within 30 days after recording an amendment to the governing documents. If a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted.¹⁰⁰

A written notice must also be sent to certain mortgage holders or assignees to obtain consent or joinder for the proposed amendment.¹⁰¹

Notices related to amendments to the governing documents must be mailed or delivered to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the parcel is located.¹⁰²

Amendment Affecting Rental Rights

Current law does not prevent a homeowners' association from adopting an amendment to its governing documents to restrict members from renting parcels. If such a provision was adopted by an association, the restriction would apply to all parcel owners regardless of when they obtained title to their property or whether they voted against the restriction. This differs from current law relating to rental restrictions in condominium associations. In a condominium association, a prohibition against the rental of units or that alters the duration of the rental term, or specifies or limits the number of times a unit owner is entitled to rent their unit 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 restrictions' effective date.¹⁰³

Effect of Proposed Changes

Amendment Notices

The bill amends s. 720.306(1)(g), F.S., to require notices related to amendments to the governing documents be mailed or delivered to the address identified as the parcel owner's mailing address in the official records of the association. The bill removes the requirement that the address on the property appraiser's website for the county in which the parcel is located is to be used for notices.

Amendment Affecting Rental Rights

The bill amends s. 720.306(1)(g), F.S., to provide that an amendment to the governing

¹⁰⁰ See s. 720.306(1)(b), F.S. The consent of mortgage holder and assignees is required for any mortgage recorded before July 1, 2013.

¹⁰¹ See s. 720.306(1)(d), F.S.

¹⁰² Section 720.306(1)(g), F.S.

¹⁰³ Section 718.110(13), F.S.

documents, rule, or regulation enacted after July 1, 2021 prohibiting a parcel owner from renting the parcel, altering the authorized duration of a rental term, or specifying or limiting the number of times a parcel owner may rent his or her parcel during a specified term applies only to a parcel owner who acquires title to the parcel after the amendment's effective date or to a parcel owner who consents to the amendment.

The bill creates s. 720.306(1)(h), F.S., to permit an association to adopt an amendment prohibiting or regulating rentals for less than six months or prohibiting rentals more than three times in a calendar year applies to all parcel owners, regardless of when the parcel owner acquired title to their parcel or whether they consented to the amendment.

The bill exempts homeowners' associations with 15 or fewer parcel owners from the provisions in the bill related to an amendment affecting the rental of parcels.¹⁰⁴

The bill also provides that a change of ownership does not occur for purposes of applying an amendment restricting rental rights when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes a parcel owner.

The bill defines "affiliated entity" to mean an entity which controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity through a transfer, merger, consolidation, public offering, reorganization, dissolution of sale of stock, or transfer of membership partnership interests.

For a conveyance to be recognized as being made to an affiliated entity, the entity must give the homeowners' association a document certifying that the exception applies and any organizational documents for the parcel owner and the affiliated entity supporting the representations in the certificate.

Transition of Homeowners' Association Control

Present Situation

Section 720.307, F.S., details when the parcel owners other than the developer are entitled to elect at least a majority of the members of the board of directors:

- Three months after 90 percent of the parcels that will be operated ultimately by the association have been conveyed to purchasers;
- When such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity for the mortgage financing of parcels;
- When the developer has abandoned or deserted his or her responsibility to maintain and complete the amenities or infrastructure disclosed in the governing documents. There is a rebuttable presumption that the developer has abandoned and deserted the property if the developer has unpaid assessments or guaranteed amounts under s. 720.308, F.S., for a period of more than two years;

¹⁰⁴ Section 720.303(1), F.S., provides that an association with 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner.

- When the developer files a petition seeking protection in bankruptcy under chapter 7 of the federal Bankruptcy Code;
- When the developer loses title to the property either through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment; or
- When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members.

Section 720.307(2), F.S., provides that non-developer parcel owners are entitled to elect at least one member of the board of directors when 50 percent of the parcels in all phases of the community have been conveyed to members.

Builders, contractors, or others who purchase a parcel for the purpose of constructing improvements on the parcel for resale are not considered to be members other than the developer.¹⁰⁵

Effect of Proposed Changes

The bill amends s. 720.307, F.S., to revise the conditions under which the non-developer members of a homeowners' association are entitled to elect the majority of the board by adding the term "other than the developer" in order to consistently distinguish between developer members and non-developer members.

Effective Date

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁰⁵ Section 720.307(1), F.S.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill Increases the maximum permissible fee an association may charge for the transfer of a unit from \$100 to \$150, and provides for the adjustment of the fee every five years to an amount equal to the total annual increases in the Consumer Price Index during that period.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Business and Professional Regulation noted:

Arbitration is an efficient and cost-effective option to mediation and court litigation. When the parties do not both elect arbitration, the first to file with either the [Division of Condominiums, Timeshares, and Mobile Homes] arbitration unit or with circuit court would determine the course of action for both parties. The proposal appears to contradict the legislative findings in s. 718.1255(3)(a), F.S., which provides that the Legislature finds that unit owners are frequently at a disadvantage when litigating against an association as the association is better able to bear the costs and expenses of litigation than a unit owner who must rely their own financial resources.¹⁰⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.714, 718.103, 718.111, 718.112, 718.113, 718.117, 718.121, 718.1255, 718.1265, 718.202, 718.303, 718.405, 718.501, 718.5014, 719.103, 719.104, 719.106, 719.128, 720.301, 720.303, 720.305, 720.306, 720.307, 720.311, 720.3075, and 720.316.

¹⁰⁶ Department of Business & Professional Regulation, *2021 Agency Legislative Bill Analysis for SB 630*, at page 8, (Feb. 4, 2021).

IX. Additional Information:

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

CS by Regulated Industries on February 16, 2021:

The committee substitute removes provisions from the bill:

- Requiring condominium associations to maintain all official records in the manner and format determined by rules of the Florida Division of Condominium, Timeshares, and Timeshares, and Mobile Homes.
- Requiring condominium associations provide an itemized list of all records made available for inspection and copying in response to a written request, and requiring that the list be accompanied by a sworn affidavit attesting to the accuracy of the list.
- Expanding the division’s regulatory authority over financial issues and defining the term “financial issues.”
- Authorizing the division to adopt rules to establish requirements for the training and education programs for condominium board members and unit owners.

The committee substitute also:

- Makes confidential any information an association obtains in connection to guests visiting homeowners in a gated community.
- Provides that a change of ownership affecting rental rights does not occur when an heir becomes the parcel owner.
- Revises the conditions under which the non-developer members of a homeowners’ association are entitled to elect the majority of the board by adding the term “other than the developer” in order to consistently distinguish between developer members and non-developer members.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) of section 627.714, Florida
Statutes, is amended to read:

627.714 Residential condominium unit owner coverage; loss
assessment coverage required.—

(4) Every individual unit owner's residential property
policy must contain a provision stating that the coverage



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afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. If a condominium association's insurance policy does not provide rights for subrogation against the unit owners in the association, an insurance policy issued to an individual unit owner in the association may not provide rights of subrogation against the condominium association.

Section 2. Subsections (20) and (21) of section 718.103, Florida Statutes, are amended to read:

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

(20) "Multicondominium" means real property ~~a real estate development~~ containing two or more condominiums, all of which are operated by the same association.

(21) "Operation" or "operation of the condominium" includes the administration and management of the condominium property and the association.

Section 3. Paragraphs (a), (b), (c), and (g) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer under ~~pursuant to~~ s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association



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and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association



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operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, 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 accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

~~15. All other written records of the association not~~



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~~specifically included in the foregoing which are related to the
operation of the association.~~

~~16.~~ A copy of the inspection report as described in s.
718.301(4) (p) .

~~16.~~17. Bids for materials, equipment, or services.

17. All other written records of the association not
specified in subparagraphs 1.-16. which are related to the
operation of the association.

(b) The official records specified in subparagraphs (a)1.-
6. must be permanently maintained from the inception of the
association. Bids for work to be performed or for materials,
equipment, or services must be maintained for at least 1 year
after receipt of the bid. All other official records must be
maintained within the state for at least 7 years, unless
otherwise provided by general law. The records of the
association shall be made available to a unit owner within 45
miles of the condominium property or within the county in which
the condominium property is located within 10 working days after
receipt of a written request by the board or its designee.
However, such distance requirement does not apply to an
association governing a timeshare condominium. This paragraph
may be complied with by having a copy of the official records of
the association available for inspection or copying on the
condominium property or association property, or the association
may offer the option of making the records available to a unit
owner electronically via the Internet or by allowing the records
to be viewed in electronic format on a computer screen and
printed upon request. The association is not responsible for the
use or misuse of the information provided to an association



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member or his or her authorized representative in ~~pursuant to~~
~~the~~ compliance with ~~requirements of~~ this chapter unless the
association has an affirmative duty not to disclose such
information under ~~pursuant to~~ this chapter.

(c)1. 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 or
authorized representative of such member. A renter of a unit has
a right to inspect and copy only the declaration of condominium
and the association's bylaws and rules. The association may
adopt reasonable rules regarding the frequency, time, location,
notice, and manner of record inspections and copying, but may
not require a member to demonstrate any purpose or state any
reason for the inspection. 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.

2. Any person who knowingly or intentionally defaces or



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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).

3. 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. 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:

a. 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



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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.

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

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-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.

d. Medical records of unit owners.

e. 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 sub-subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each



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unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers 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.

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

g. 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.

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, ~~or~~ collection of subpages or web portals, or an application which is dedicated to the association's



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activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which ~~that~~ contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents ~~thereto~~. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after



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bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed \$500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the



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meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

1. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under ~~pursuant to~~ s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents ~~online~~. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under ~~pursuant to~~ this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 4. Paragraphs (d), (i), (j), (k), and (p) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (c) is added to subsection (1) of that section, to read:

718.112 Bylaws.—



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(1) GENERALLY.—

(c) The association may extinguish a discriminatory restriction as provided under s. 712.065.

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

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not



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serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. 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



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association, is not eligible to be a candidate for board membership and may not be listed on the ballot. 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. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda; ~~it must~~ be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; ~~it~~ and ~~must~~ be posted in a conspicuous place on the condominium property or association property at least 14 continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws. If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a



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specific location on the condominium property or association
property where all notices of unit owner meetings must be
posted. This requirement does not apply if there is no
condominium property for posting notices. In lieu of, or in
addition to, the physical posting of meeting notices, 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 posted physically on the 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. In addition to any
of the authorized means of providing notice of a meeting of the
board, the association may, by rule, adopt a procedure for
conspicuously posting the meeting notice and the agenda on a
website serving the condominium association for at least the
minimum period of time for which a notice of a meeting is also
required to be physically posted on the condominium property.
Any rule adopted shall, in addition to other matters, include a
requirement that the association send an electronic notice in
the same manner as a notice for a meeting of the members, which
must include a hyperlink to the website where the notice is
posted, to unit owners whose e-mail addresses are included in
the association's official records. Unless a unit owner waives



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in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a



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first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, 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, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared 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 sub-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 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 authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance



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with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, 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. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium 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



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suspension. The secretary 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.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium 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 bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass e-mails ~~emails~~ sent to members on behalf of the



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association in the course of giving electronic notices.

7. 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.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any 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 sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.



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Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which 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.

(i) *Transfer fees.* ~~An association may not no charge a fee shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but may not in no event may such fee exceed \$150 \$100 per applicant. For the purpose of calculating the fee, spouses or a parent or parents and any dependent children other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, a charge may not no charge shall be made. Such fees must be adjusted every 5 years in an amount equal to the total of the annual increases occurring in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items during that 5-year period. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website. The foregoing notwithstanding, ~~an association may,~~ if the authority to do so appears in the declaration, articles, or~~



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bylaws, an association may require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1 month's rent, into an escrow account maintained by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83.

(j) *Recall of board members.*—Subject to s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. Such member or members shall be recalled effective immediately upon conclusion of the board meeting, provided that the recall is facially valid. A recalled member must turn over to the board, within 10 full business days after the vote, any and all records and property of the association in



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their possession.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. Such member or members shall be recalled effective immediately upon the conclusion of the board meeting, provided that the recall is facially valid. A recalled member must turn over to the board, within 10 full business days, any and all records and property of the association in their possession.

3. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall is ~~shall be~~ deemed effective and the board members so recalled shall turn over to the board within 10 full business days after the vote any and all records and property of the association.

4. If the board fails to duly notice and hold the required meeting or at the conclusion of the meeting determines that the recall is not facially valid, the unit owner representative may file a petition or court action under ~~pursuant to~~ s. 718.1255 challenging the board's failure to act or challenging the board's determination on facial validity. The petition or action must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this subparagraph is limited to the sufficiency



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of service on the board and the facial validity of the written agreement or ballots filed.

5. If a vacancy occurs on the board as a result of a recall or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

6. A board member who has been recalled may file a petition or court action under ~~pursuant to~~ s. 718.1255 challenging the validity of the recall. The petition or action must be filed within 60 days after the recall. The association and the unit owner representative shall be named as the respondents. The petition or action may challenge the facial validity of the written agreement or ballots filed or the substantial compliance with the procedural requirements for the recall. If the arbitrator or court determines the recall was invalid, the petitioning board member shall immediately be reinstated and the recall is null and void. A board member who is successful in challenging a recall is entitled to recover reasonable attorney fees and costs from the respondents. The arbitrator or court may award reasonable attorney fees and costs to the respondents if



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they prevail, if the arbitrator or court makes a finding that the petitioner's claim is frivolous.

7. The division or a court of competent jurisdiction may not accept for filing a recall petition or court action, whether filed under ~~pursuant to~~ subparagraph 1., subparagraph 2., subparagraph 4., or subparagraph 6., when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

(k) Alternative dispute resolution Arbitration.—There must ~~shall~~ be a provision for alternative dispute resolution ~~mandatory nonbinding arbitration~~ as provided for in s. 718.1255 for any residential condominium.

~~(p) Service providers; conflicts of interest. An association, which is not a timeshare condominium association, may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. This paragraph does not apply to a service provider in which a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.~~

Section 5. Subsection (8) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.—



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(8) The Legislature finds that the use of electric and natural gas fuel vehicles conserves and protects the state's environmental resources, provides significant economic savings to drivers, and serves an important public interest. The participation of condominium associations is essential to the state's efforts to conserve and protect the state's environmental resources and provide economic savings to drivers. For purposes of this subsection, the term "natural gas fuel" has the same meaning as in s. 206.9951, and the term "natural gas fuel vehicle" means any motor vehicle, as defined in s. 320.01, that is powered by natural gas fuel. Therefore, the installation of an electric vehicle charging station or a natural gas fuel station shall be governed as follows:

(a) A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station or a natural gas fuel station within the boundaries of the unit owner's limited common element or exclusively designated parking area. The board of administration of a condominium association may not prohibit a unit owner from installing an electric vehicle charging station for an electric vehicle, as defined in s. 320.01, or a natural gas fuel station for a natural gas fuel vehicle within the boundaries of his or her limited common element or exclusively designated parking area. The installation of such charging or fuel stations are subject to the provisions of this subsection.

(b) The installation may not cause irreparable damage to the condominium property.

(c) The electricity for the electric vehicle charging



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station or natural gas fuel station must be separately metered
or metered by an embedded meter and payable by the unit owner
installing such charging or fuel station or by his or her
successor.

(d) The cost for supply and storage of the natural gas fuel
must be paid by the unit owner installing the natural gas fuel
station or by his or her successor.

~~(e)-(d)~~ The unit owner who is installing an electric vehicle
charging station or a natural gas fuel station is responsible
for the costs of installation, operation, maintenance, and
repair, including, but not limited to, hazard and liability
insurance. The association may enforce payment of such costs
under ~~pursuant to~~ s. 718.116.

~~(f)-(e)~~ If the unit owner or his or her successor decides
there is no longer a need for the electric ~~electronic~~ vehicle
charging station or natural gas fuel station, such person is
responsible for the cost of removal of such ~~the electronic~~
~~vehicle~~ charging or fuel station. The association may enforce
payment of such costs under ~~pursuant to~~ s. 718.116.

(g) The unit owner installing, maintaining, or removing the
electric vehicle charging station or natural gas fuel station is
responsible for complying with all federal, state, or local laws
and regulations applicable to such installation, maintenance, or
removal.

(h) ~~(f)~~ The association may require the unit owner to:
1. Comply with bona fide safety requirements, consistent
with applicable building codes or recognized safety standards,
for the protection of persons and property.
2. Comply with reasonable architectural standards adopted



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by the association that govern the dimensions, placement, or external appearance of the electric vehicle charging station or natural gas fuel station, provided that such standards may not prohibit the installation of such charging or fuel station or substantially increase the cost thereof.

3. Engage the services of a licensed and registered firm ~~electrical contractor or engineer~~ familiar with the installation or removal and core requirements of an electric vehicle charging station or a natural gas fuel station.

4. Provide a certificate of insurance naming the association as an additional insured on the owner's insurance policy for any claim related to the installation, maintenance, or use of the electric vehicle charging station or natural gas fuel station within 14 days after receiving the association's approval to install such charging or fuel station or notice to provide such a certificate.

5. Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station or natural gas fuel station within 14 days after receiving the association's insurance premium invoice.

(i) ~~(g)~~ The association provides an implied easement across the common elements of the condominium property to the unit owner for purposes of ~~the installation of the~~ electric vehicle charging station or natural gas fuel station installation, and the furnishing of electrical power or natural gas fuel supply, including any necessary equipment, to such charging or fuel station, subject to the requirements of this subsection.

Section 6. Subsection (16) of section 718.117, Florida



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Statutes, is amended to read:

718.117 Termination of condominium.—

(16) RIGHT TO CONTEST.—A unit owner or lienor may contest a plan of termination by initiating a petition in accordance with ~~for mandatory nonbinding arbitration pursuant to s. 718.1255~~ within 90 days after the date the plan is recorded. A unit owner or lienor may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners, that the liens of the first mortgages of unit owners other than the bulk owner have not or will not be satisfied to the extent required by subsection (3), or that the required vote to approve the plan was not obtained. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable or that the required vote was not obtained. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in subsection (12). If the petition is filed with the division for arbitration, the arbitrator shall determine the rights and interests of the parties in the apportionment of the sale proceeds. If the arbitrator determines that the apportionment of sales proceeds is not fair and reasonable, the arbitrator may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based



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upon the proceedings and order the modified plan of termination to be implemented. If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, the arbitrator may void the plan or grant other relief it deems just and proper. The arbitrator shall automatically void the plan upon a finding that any of the disclosures required in subparagraph (3)(c)5. are omitted, misleading, incomplete, or inaccurate. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the condominium property or the vesting of the condominium property in the trustee, but shall only be a claim against the proceeds of the plan. In any such action, the prevailing party shall recover reasonable attorney fees and costs.

Section 7. Subsections (2) and (4) of section 718.121, Florida Statutes, are amended to read:

718.121 Liens.—

(2) Labor performed on or materials furnished to a unit may ~~shall~~ not be the basis for the filing of a lien under ~~pursuant~~ to part I of chapter 713, the Construction Lien Law, against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished for the installation of a natural gas fuel station or an electric electronic vehicle charging station under ~~pursuant to~~ s. 718.113(8) may not be the basis for filing a lien under part I of chapter 713 against the association, but such a lien may be filed against the unit owner. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements,



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but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

(4) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, and by first-class United States mail to the owner at his or her last address as reflected in the records of the association, if the address is within the United States, and delivered to the owner at the address of the unit if the owner's address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient. ~~Delivery of the Notice is shall be~~ deemed to have been delivered ~~given~~ upon mailing as required by this subsection, provided that it is. ~~The notice must be~~ in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be



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paid within 30 days after your receipt of this letter.
This letter shall serve as the association's notice of
intent to record a Claim of Lien against your property
no sooner than 30 days after your receipt of this
letter, unless you pay in full the amounts set forth
below:

Maintenance due ...(dates)...	\$.....
Late fee, if applicable	\$.....
Interest through ...(dates)...*	\$.....
Certified mail charges <u>...(dates)...</u>	\$.....
Other costs	\$.....
TOTAL OUTSTANDING	\$.....

*Interest accrues at the rate of percent per annum.

Section 8. Section 718.1255, Florida Statutes, is amended
to read:

718.1255 Alternative dispute resolution; ~~voluntary~~
mediation; ~~mandatory~~ nonbinding arbitration; legislative
findings.—

(1) DEFINITIONS.—As used in this section, the term
“dispute” means any disagreement between two or more parties
that involves:

(a) The authority of the board of directors, under this
chapter or association document, to:

1. Require any owner to take any action, or not to take any
action, involving that owner's unit or the appurtenances
thereto.

2. Alter or add to a common area or element.



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(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.
2. Give adequate notice of meetings or other actions.
3. Properly conduct meetings.
4. Allow inspection of books and records.

(c) A plan of termination pursuant to s. 718.117.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

(2) ~~VOLUNTARY MEDIATION.~~—Voluntary Mediation through Citizen Dispute Settlement Centers as provided for in s. 44.201 is encouraged.

(3) LEGISLATIVE FINDINGS.—

(a) The Legislature finds that unit owners are frequently at a disadvantage when litigating against an association. Specifically, a condominium association, with its statutory assessment authority, is often more able to bear the costs and expenses of litigation than the unit owner who must rely on his or her own financial resources to satisfy the costs of litigation against the association.

(b) The Legislature finds that alternative dispute



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resolution has been making progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to court litigation. However, the Legislature also finds that alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.

(c) There exists a need to develop a flexible means of alternative dispute resolution that directs disputes to the most efficient means of resolution.

(d) The high cost and significant delay of circuit court litigation faced by unit owners in the state can be alleviated by requiring nonbinding arbitration and mediation in appropriate cases, thereby reducing delay and attorney ~~attorney's~~ fees while preserving the right of either party to have its case heard by a jury, if applicable, in a court of law.

(4) ~~MANDATORY~~ NONBINDING ARBITRATION AND MEDIATION OF DISPUTES.—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this chapter. A ~~No~~ person may not be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years



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immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar. Arbitrator certification is valid for 1 year. An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed. The department may not enter into a legal services contract for an arbitration hearing under this chapter with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute. The department shall adopt rules of procedure to govern such arbitration hearings including mediation incident thereto. The decision of an arbitrator ~~is shall be~~ final; however, a decision ~~is shall~~ not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator ~~is shall be~~ admissible in evidence in the trial de novo.

(a) Before ~~Prior to~~ the institution of court litigation, a party to a dispute, other than an election or recall dispute, shall either petition the division for nonbinding arbitration or initiate presuit mediation as provided in subsection (5). Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in arbitration. The petition must be accompanied by a filing fee in the amount of \$50. Filing fees collected under this section must be used to



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defray the expenses of the alternative dispute resolution program.

(b) The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;

2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, the division shall assign or enter into a contract with



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an arbitrator and serve a copy of the petition upon all respondents. The arbitrator shall conduct a hearing within 30 days after being assigned or entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorney fees



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1084 incurred by the other parties. Unless otherwise agreed to by the
1085 parties or as provided by order of the arbitrator, a party is
1086 deemed to have appeared at a mediation conference by the
1087 physical presence of the party or its representative having full
1088 authority to settle without further consultation, provided that
1089 an association may comply by having one or more representatives
1090 present with full authority to negotiate a settlement and
1091 recommend that the board of administration ratify and approve
1092 such a settlement within 5 days from the date of the mediation
1093 conference. The parties shall share equally the expense of
1094 mediation, unless they agree otherwise.

1095 (g) The purpose of mediation as provided for by this
1096 section is to present the parties with an opportunity to resolve
1097 the underlying dispute in good faith, and with a minimum
1098 expenditure of time and resources.

1099 (h) Mediation proceedings must generally be conducted in
1100 accordance with the Florida Rules of Civil Procedure, and these
1101 proceedings are privileged and confidential to the same extent
1102 as court-ordered mediation. Persons who are not parties to the
1103 dispute are not allowed to attend the mediation conference
1104 without the consent of all parties, with the exception of
1105 counsel for the parties and corporate representatives designated
1106 to appear for a party. If the mediator declares an impasse after
1107 a mediation conference has been held, the arbitration proceeding
1108 terminates, unless all parties agree in writing to continue the
1109 arbitration proceeding, in which case the arbitrator's decision
1110 shall be binding or nonbinding, as agreed upon by the parties;
1111 in the arbitration proceeding, the arbitrator shall not consider
1112 any evidence relating to the unsuccessful mediation except in a



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proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorney fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the



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parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney fees incurred in the arbitration proceeding as well as the costs and reasonable attorney fees incurred in preparing for and attending any scheduled mediation. An arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a



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trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall recover reasonable attorney fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

(5) PRESUIT MEDIATION.—In lieu of the initiation of nonbinding arbitration as provided in subsections (1)–(4), a party may submit a dispute to presuit mediation in accordance with s. 720.311; however, election and recall disputes are not eligible for mediation and such disputes must be arbitrated by the division or filed in a court of competent jurisdiction.

(6) DISPUTES INVOLVING ELECTION IRREGULARITIES.—Every arbitration petition received by the division and required to be filed under this section challenging the legality of the election of any director of the board of administration must be handled on an expedited basis in the manner provided by the division's rules for recall arbitration disputes.

~~(7)~~ (6) APPLICABILITY.—This section does not apply to a nonresidential condominium unless otherwise specifically provided for in the declaration of the nonresidential condominium.

Section 9. Section 718.1265, Florida Statutes, is amended to read:

718.1265 Association emergency powers.—

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



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prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with ~~the provisions of~~ s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), ~~event~~ for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located, may, ~~but is not required to,~~ exercise the following powers:

(a) Conduct board meetings, committee meetings, elections, and membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as is practicable. Such notice may be given in any practicable manner, including publication, radio, United States mail, the Internet, electronic transmission, public service announcements, and conspicuous posting on the condominium property or association property or any other means the board deems reasonable under the circumstances. Notice of ~~board~~ decisions also may be communicated as provided in this paragraph.

(b) Cancel and reschedule any association meeting.

(c) Name as assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the association.

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

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



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removal.

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

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

(h) Require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located. Should any unit owner or other occupant of a condominium fail or refuse to evacuate the condominium property or association property where the board has required evacuation, the association shall be immune from liability or injury to persons or property arising from such failure or refusal.

(i) Based upon advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine whether the condominium property, association property, or any portion thereof can be safely inhabited, accessed, or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.



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(j) Mitigate further damage, injury, or contagion, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus or contagion, 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 condominium property, even if 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 any unit owner or owners, for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further injury, contagion, or damage to the condominium property or association property. In such event, the unit owner or owners on whose behalf the board has contracted are 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. 718.116 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, and the sanitizing of the condominium property or association property, as applicable.

(l) Regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles, or bylaws of the association, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge



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association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.

(2) The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit and when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a unit;
or

(b) The habitability of the unit or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.



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Section 10. Subsection (3) of section 718.202, Florida Statutes, is amended to read:

718.202 Sales or reservation deposits prior to closing.—

(3) If the contract for sale of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He or she may use the funds for the actual costs incurred by the developer in the actual construction and development of the condominium property in which the unit to be sold is located. For purposes of this subsection, the term "actual costs" includes, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons; ~~or~~ for advertising, marketing, or promotional purposes; or for loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

Section 11. Subsection (1) and paragraph (b) of subsection (3) of section 718.303, Florida Statutes, are amended to read:



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718.303 Obligations of owners and occupants; remedies.—

(1) Each unit owner, ~~each~~ tenant and other invitee, and ~~each~~ association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which are ~~shall be deemed~~ expressly incorporated into any lease of a unit. Actions at law or in equity ~~for damages or for injunctive relief~~, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

(e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1)(a) is entitled to recover reasonable attorney ~~attorney's~~ fees. A unit owner prevailing in an action between the association and the unit owner under this subsection ~~section~~, in addition to recovering his or her reasonable attorney ~~attorney's~~ fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of



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the litigation. This relief does not exclude other remedies provided by law. Actions arising under this subsection are not considered ~~may not be deemed to be~~ actions for specific performance.

(3) The association may levy reasonable fines for the failure of the owner of the unit or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed \$100 per violation, or \$1,000 in the aggregate.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice to the unit owner and, if applicable, any tenant ~~occupant~~, licensee, or invitee of the unit owner sought to be fined or suspended, and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not approve the proposed fine or suspension by majority vote, the fine or suspension may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the unit owner and, if applicable, to any tenant,



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licensee, or invitee of the unit owner ~~the date of the committee meeting at which the fine is approved.~~ The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

Section 12. Subsection (5) is added to section 718.405, Florida Statutes, to read:

718.405 Multicondominiums; multicondominium associations.—

(5) This section does not prevent or restrict a multicondominium association from adopting a consolidated or combined declaration of condominium if such declaration complies with s. 718.104 and does not serve to merge the condominiums or change the legal descriptions of the condominium parcels as set forth in s. 718.109, unless accomplished in accordance with law. This section is intended to clarify existing law and applies to associations existing on July 1, 2021.

Section 13. Section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with ~~the provisions of~~ this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees,



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or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and the maintenance of and unit owner access to association records under ~~pursuant to~~ s. 718.111(12).

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is



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relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community



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association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer, fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a



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receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under ~~pursuant to~~ subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed under ~~pursuant to~~ subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may 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; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and



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1548 knowingly" means that the division informed the officer or board
1549 member that his or her action or intended action violates this
1550 chapter, a rule adopted under this chapter, or a final order of
1551 the division and that the officer or board member refused to
1552 comply with the requirements of this chapter, a rule adopted
1553 under this chapter, or a final order of the division. The
1554 division, before initiating formal agency action under chapter
1555 120, must afford the officer or board member an opportunity to
1556 voluntarily comply, and an officer or board member who complies
1557 within 10 days is not subject to a civil penalty. A penalty may
1558 be imposed on the basis of each day of continuing violation, but
1559 the penalty for any offense may not exceed \$5,000. ~~By January 1,~~
1560 ~~1998,~~ The division shall adopt, by rule, penalty guidelines
1561 applicable to possible violations or to categories of violations
1562 of this chapter or rules adopted by the division. The guidelines
1563 must specify a meaningful range of civil penalties for each such
1564 violation of the statute and rules and must be based upon the
1565 harm caused by the violation, the repetition of the violation,
1566 and upon such other factors deemed relevant by the division. For
1567 example, the division may consider whether the violations were
1568 committed by a developer, bulk assignee, or bulk buyer, or
1569 owner-controlled association, the size of the association, and
1570 other factors. The guidelines must designate the possible
1571 mitigating or aggravating circumstances that justify a departure
1572 from the range of penalties provided by the rules. It is the
1573 legislative intent that minor violations be distinguished from
1574 those which endanger the health, safety, or welfare of the
1575 condominium residents or other persons and that such guidelines
1576 provide reasonable and meaningful notice to the public of likely



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penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records



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are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least \$500 but no more than \$5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney ~~attorney's~~ fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce ~~the provisions of~~ this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.



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(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in alternative dispute resolution ~~arbitration~~ proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or



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requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing under ~~pursuant to~~ ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under ~~pursuant to~~ this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered,



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destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations



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exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

(2) (a) Each condominium association which operates more than two units shall pay to the division an annual fee in the amount of \$4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

Section 14. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office in a Leon County ~~on the premises of the division or, if suitable space cannot be provided there, at another~~ place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 15. Subsection (25) of section 719.103, Florida Statutes, is amended to read:

719.103 Definitions.—As used in this chapter:



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(25) "Unit" means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents. An interest in a unit is an interest in real property.

Section 16. Paragraph (c) of subsection (2) of section 719.104, Florida Statutes, is amended 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, but may not require a member to demonstrate any purpose or state any reason for the inspection.

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 member ~~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



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1780 attorney fees from the person in control of the records who,
1781 directly or indirectly, knowingly denied access to the records.
1782 Any person who knowingly or intentionally defaces or destroys
1783 accounting records that are required by this chapter to be
1784 maintained during the period for which such records are required
1785 to be maintained, or who knowingly or intentionally fails to
1786 create or maintain accounting records that are required to be
1787 created or maintained, with the intent of causing harm to the
1788 association or one or more of its members, is personally subject
1789 to a civil penalty under ~~pursuant to~~ s. 719.501(1)(d). The
1790 association shall maintain an adequate number of copies of the
1791 declaration, articles of incorporation, bylaws, and rules, and
1792 all amendments to each of the foregoing, as well as the question
1793 and answer sheet as described in s. 719.504 and year-end
1794 financial information required by the department, on the
1795 cooperative property to ensure their availability to members
1796 ~~unit owners~~ and prospective purchasers, and may charge its
1797 actual costs for preparing and furnishing these documents to
1798 those requesting the same. An association shall allow a member
1799 or his or her authorized representative to use a portable
1800 device, including a smartphone, tablet, portable scanner, or any
1801 other technology capable of scanning or taking photographs, to
1802 make an electronic copy of the official records in lieu of the
1803 association providing the member or his or her authorized
1804 representative with a copy of such records. The association may
1805 not charge a member or his or her authorized representative for
1806 the use of a portable device. Notwithstanding this paragraph,
1807 the following records shall not be accessible to members ~~unit~~
1808 ~~owners~~:



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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



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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 unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers 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.

Section 17. Paragraphs (b), (f), and (l) of subsection (1) of section 719.106, Florida Statutes, are amended, and subsection (3) is added to that section, 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:

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

1. Unless otherwise provided in the bylaws, the percentage



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

2. Except as specifically otherwise provided herein, after January 1, 1992, 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. 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 (j)2., for votes taken to waive the financial reporting requirements of s. 719.104(4)(b), 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), after January 1, 1992, no proxy, limited or general, shall 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 also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this section, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies or require the use of limited proxies for any agenda item or



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election at any meeting of a timeshare cooperative.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be 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 and may not be used for the purposes of creating a quorum.

5. A board member or committee member participating 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 ~~When some or all of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must shall be used utilized so that the conversation of such those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by any unit owners present at a meeting.~~

(f) *Recall of board members.*—Subject to s. 719.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests.



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A special meeting of the voting interests to recall any member of the board of administration may be called by 10 percent of the unit owners giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall shall be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed as set forth in subparagraph 3.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all



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records and property of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration under ~~pursuant to the procedures of~~ s. 719.1255 or file an action with a court of competent jurisdiction. For purposes of this paragraph, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration or in a court action. If the arbitrator or court certifies the recall as to any member of the board, the recall ~~is shall be~~ effective upon the mailing of the final order of arbitration to the association or the final order of the court. If the association fails to comply with the order of the court or the arbitrator, the division may take action under ~~pursuant to~~ s. 719.501. Any member so recalled shall deliver to the board any and all records and property of the association in the member's possession within 5 full business days after the effective date of the recall.

4. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall ~~is shall be~~ deemed effective and the board members so recalled shall immediately turn over to the board any and all records and property of the association.

5. If the board fails to duly notice and hold the required



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meeting or fails to file the required petition or action, the unit owner representative may file a petition under ~~pursuant to~~ s. 719.1255 or file an action in a court of competent jurisdiction challenging the board's failure to act. The petition or action must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

6. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this chapter. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

7. A board member who has been recalled may file a petition under ~~pursuant to~~ s. 719.1255 or file an action in a court of competent jurisdiction challenging the validity of the recall. The petition or action must be filed within 60 days after the recall is deemed certified. The association and the unit owner representative shall be named as the respondents.

8. The division or court may not accept for filing a recall petition or action, whether filed under ~~pursuant to~~ subparagraph



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1., subparagraph 2., subparagraph 5., or subparagraph 7. and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

(1) Alternative dispute resolution ~~Arbitration~~.—There shall be a provision for alternative dispute resolution ~~mandatory nonbinding arbitration~~ of internal disputes arising from the operation of the cooperative in accordance with s. 719.1255.

(3) GENERALLY.—The association may extinguish a discriminatory restriction as provided under s. 712.065.

Section 18. Section 719.128, Florida Statutes, is amended 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 or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), ~~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 meetings, committee meetings, elections, or membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication 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, electronic transmission, public service announcements,



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conspicuous posting on the cooperative property, or any other means the board deems appropriate under the circumstances. Notice of decisions may also be communicated as provided in this paragraph.

(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 or an emergency plan before, during, 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 public health officials, or upon the advice of licensed professionals retained by or otherwise available to 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 public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board of administration, determine whether the cooperative property or



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any portion thereof can be safely inhabited or occupied.

However, such determination is not conclusive as to any determination of habitability pursuant to the cooperative documents ~~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 or prohibit or restrict access to the cooperative property in the event of a public health threat. 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, injury, or contagion, 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 cooperative documents ~~declaration~~ or law to insure or replace those fixtures and to remove personal property from a unit or to sanitize the cooperative property.

(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 injury, contagion, or 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



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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, and the sanitizing of the cooperative property.

(1) 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, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit when access is necessary in connection with:



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(a) The sale, lease, or other transfer of title of a unit;
or

(b) The habitability of the unit or for the health and
safety of such person unless a governmental order or
determination, or a public health directive from the Centers for
Disease Control and Prevention, has been issued prohibiting such
access to the unit. Any such access is subject to reasonable
restrictions adopted by the association.

Section 19. Subsection (8) of section 720.301, Florida
Statutes, is amended to read:

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

(8) "Governing documents" means:

(a) The recorded declaration of covenants for a community
and all duly adopted and recorded amendments, supplements, and
recorded exhibits thereto; and

(b) The articles of incorporation and bylaws of the
homeowners' association and any duly adopted amendments thereto;
~~and~~

~~(c) Rules and regulations adopted under the authority of~~
~~the recorded declaration, articles of incorporation, or bylaws~~
~~and duly adopted amendments thereto.~~

Section 20. Present paragraph (1) of subsection (4) of
section 720.303, Florida Statutes, is redesignated as paragraph
(m) and amended, a new paragraph (1) is added to that
subsection, and paragraph (c) of subsection (2), paragraph (c)
of subsection (5), paragraphs (c) and (d) of subsection (6), and
paragraphs (b), (d), (g), (k), and (l) of subsection (10) are
amended, to read:

720.303 Association powers and duties; meetings of board;



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

(2) BOARD MEETINGS.—

(c) The bylaws shall provide the following for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to include the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the association bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. 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. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a



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procedure for conspicuously posting the meeting notice and the agenda on the association's website or an application that can be downloaded on a mobile device for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the association property. Any rule adopted must, in addition to other matters, include a requirement that the association send an electronic notice to members whose e-mail addresses are included in the association's official records in the same manner as is required for a notice of a meeting of the members. Such notice must include a hyperlink to the website or such mobile application on which the meeting notice is posted. The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association to be used for such purposes; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.



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3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(4) OFFICIAL RECORDS.—The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(1) Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.

(m) ~~(1)~~ All other written records of the association not specifically included in this subsection ~~the foregoing~~ which are related to the operation of the association.

(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



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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 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



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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. Information an association obtains in a gated community in connection with guests' visits to parcel owners or community residents.

4. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll,



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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.

~~5.4.~~ Medical records of parcel owners or community residents.

~~6.5.~~ 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 of each parcel owner. However, an owner may exclude his or her telephone numbers 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 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.

~~7.6.~~ Any electronic security measure that is used by the association to safeguard data, including passwords.



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2331 ~~8.7.~~ The software and operating system used by the
2332 association which allows the manipulation of data, even if the
2333 owner owns a copy of the same software used by the association.
2334 The data is part of the official records of the association.

2335 (6) BUDGETS.—

2336 (c)1. If the budget of the association does not provide for
2337 reserve accounts under ~~pursuant to~~ paragraph (d), or the
2338 declaration of covenants, articles, or bylaws do not obligate
2339 the developer to create reserves, and the association is
2340 responsible for the repair and maintenance of capital
2341 improvements that may result in a special assessment if reserves
2342 are not provided or not fully funded, each financial report for
2343 the preceding fiscal year required by subsection (7) must
2344 contain the following statement in conspicuous type:

2345
2346 THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR FULLY FUNDED
2347 RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED
2348 MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS REGARDING
2349 THOSE ITEMS. OWNERS MAY ELECT TO PROVIDE FOR FULLY FUNDED
2350 RESERVE ACCOUNTS UNDER ~~PURSUANT TO~~ SECTION 720.303(6), FLORIDA
2351 STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL
2352 VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A
2353 MEETING OR BY WRITTEN CONSENT.

2354 2. If the budget of the association does provide for
2355 funding accounts for deferred expenditures, including, but not
2356 limited to, funds for capital expenditures and deferred
2357 maintenance, but such accounts are not created or established
2358 under ~~pursuant to~~ paragraph (d), each financial report for the
2359 preceding fiscal year required under subsection (7) must also



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contain the following statement in conspicuous type:
THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY
DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES
AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED
IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED
TO PROVIDE FOR RESERVE ACCOUNTS UNDER ~~PURSUANT TO~~ SECTION
720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE
RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR
ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

(d) An association is deemed to have provided for reserve
~~accounts if reserve accounts have been initially established by~~
~~the developer or if the membership of the association~~
~~affirmatively elects to provide for reserves. If reserve~~
~~accounts are established by the developer, the budget must~~
~~designate the components for which the reserve accounts may be~~
~~used. If reserve accounts are not initially provided by the~~
~~developer, the membership of the association may elect to do so~~
upon the affirmative approval of a majority of the total voting
interests of the association. Such approval may be obtained by
vote of the members at a duly called meeting of the membership
or by the written consent of a majority of the total voting
interests of the association. The approval action of the
membership must state that reserve accounts shall be provided
for in the budget and must designate the components for which
the reserve accounts are to be established. Upon approval by the
membership, the board of directors shall include the required
reserve accounts in the budget in the next fiscal year following
the approval and each year thereafter. Once established as
provided in this subsection, the reserve accounts must be funded



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or maintained or have their funding waived in the manner provided in paragraph (f).

(10) RECALL OF DIRECTORS.—

(b)1. Board directors may be recalled by an agreement in writing or by written ballot without a membership meeting. The agreement in writing or the written ballots, or a copy thereof, shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure.

2. The board shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing or written ballots. At the meeting, the board shall either certify the written ballots or written agreement to recall a director or directors of the board, in which case such director or directors shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in paragraph (d).

3. When it is determined by the department pursuant to binding arbitration proceedings or the court in an action filed in a court of competent jurisdiction that an initial recall effort was defective, written recall agreements or written ballots used in the first recall effort and not found to be defective may be reused in one subsequent recall effort. However, in no event is a written agreement or written ballot valid for more than 120 days after it has been signed by the member.

4. Any rescission or revocation of a member's written recall ballot or agreement must be in writing and, in order to



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be effective, must be delivered to the association before the association is served with the written recall agreements or ballots.

5. The agreement in writing or ballot shall list at least as many possible replacement directors as there are directors subject to the recall, when at least a majority of the board is sought to be recalled; the person executing the recall instrument may vote for as many replacement candidates as there are directors subject to the recall.

(d) If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file an action with a court of competent jurisdiction or file with the department a petition for binding arbitration under ~~pursuant to~~ the applicable procedures in ss. 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For the purposes of this section, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration or in a court action. If the arbitrator or court certifies the recall as to any director or directors of the board, the recall will be effective upon the final order of the court or the mailing of the final order of arbitration to the association. The director or directors so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.

(g) If the board fails to duly notice and hold the required meeting or fails to file the required petition or action, the



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2447 parcel unit owner representative may file a petition or a court
2448 action under ~~pursuant to~~ s. 718.1255 challenging the board's
2449 failure to act. The petition or action must be filed within 60
2450 days after the expiration of the applicable 5-full-business-day
2451 period. The review of a petition or action under this paragraph
2452 is limited to the sufficiency of service on the board and the
2453 facial validity of the written agreement or ballots filed.

2454 (k) A board member who has been recalled may file an action
2455 with a court of competent jurisdiction or a petition under
2456 ~~pursuant to~~ ss. 718.112(2)(j) and 718.1255 and the rules adopted
2457 challenging the validity of the recall. The petition or action
2458 must be filed within 60 days after the recall is deemed
2459 certified. The association and the parcel unit owner
2460 representative shall be named as respondents.

2461 (l) The division or a court of competent jurisdiction may
2462 not accept for filing a recall petition or action, whether filed
2463 under ~~pursuant to~~ paragraph (b), paragraph (c), paragraph (g),
2464 or paragraph (k) and regardless of whether the recall was
2465 certified, when there are 60 or fewer days until the scheduled
2466 reelection of the board member sought to be recalled or when 60
2467 or fewer days have not elapsed since the election of the board
2468 member sought to be recalled.

2469 Section 21. Subsection (2) of section 720.305, Florida
2470 Statutes, is amended to read:

2471 720.305 Obligations of members; remedies at law or in
2472 equity; levy of fines and suspension of use rights.—

2473 (2) An ~~The~~ association may levy reasonable fines. A fine
2474 may not exceed \$100 per violation against any member or any
2475 member's tenant, guest, or invitee for the failure of the owner



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of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of



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the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the proposed fine or suspension levied by the board is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner ~~the date of the committee meeting at which the fine is approved~~. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any occupant ~~tenant~~, licensee, or invitee of the parcel owner.

Section 22. Paragraph (g) of subsection (1) and paragraph (c) of subsection (9) of section 720.306, Florida Statutes, are amended, and paragraph (h) is added to subsection (1) of that section, to read:

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

(1) QUORUM; AMENDMENTS.—

(g) A notice required under this section must be mailed or delivered to the address identified as the parcel owner's mailing address in the official records of the association as required under s. 720.303(4) ~~on the property appraiser's website for the county in which the parcel is located~~, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by



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electronic transmission.

(h)1. Except as provided herein, an amendment to a governing document, rule, or regulation enacted after July 1, 2021, which prohibits a parcel owner from renting his or her parcel, alters the authorized duration of a rental term, or specifies or limits the number of times that a parcel owner may rent his or her parcel during a specified period, applies only to a parcel owner who consents, individually or through a representative, to the amendment, and to parcel owners who acquire title to a parcel after the effective date of the amendment.

2. Notwithstanding subparagraph 1., an association may amend its governing documents to prohibit or regulate rental durations that are for terms of less than 6 months and to prohibit a parcel owner from renting his or parcel more than three times in a calendar year. Such amendments apply to all parcel owners.

3. This paragraph does not affect the amendment restrictions for associations of 15 or fewer parcel owners as provided in s. 720.303(1).

4. For purposes of this paragraph, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes a parcel owner. For purposes of this paragraph, the term "affiliated entity" means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of



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membership partnership interests. For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish the association a document certifying that this paragraph applies, as well as providing any organizational documents for the parcel owner and the affiliated entity that support the representations in the certificate, as requested by the association.

(9) ELECTIONS AND BOARD VACANCIES.—

(c) Any election dispute between a member and an association must be submitted to ~~mandatory~~ binding arbitration with the division or filed with a court of competent jurisdiction. Such proceedings that are submitted to binding arbitration with the division must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an 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 the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

Section 23. Subsections (1) and (2) of section 720.307, Florida Statutes, are amended to read:

720.307 Transition of association control in a community.—



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With respect to homeowners' associations:

(1) Members other than the developer are entitled to elect at least a majority of the members of the board of directors of the homeowners' association when the earlier of the following events occurs:

(a) Three months after 90 percent of the parcels in all phases of the community that will ultimately be operated by the homeowners' association have been conveyed to members other than the developer;

(b) Such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of parcels;

(c) Upon the developer abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the governing documents. There is a rebuttable presumption that the developer has abandoned and deserted the property if the developer has unpaid assessments or guaranteed amounts under s. 720.308 for a period of more than 2 years;

(d) Upon the developer filing a petition seeking protection under chapter 7 of the federal Bankruptcy Code;

(e) Upon the developer losing title to the property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment; or

(f) Upon a receiver for the developer being appointed by a



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circuit court and not being discharged within 30 days after such appointment, unless the court determines within 30 days after such appointment that transfer of control would be detrimental to the association or its members.

For purposes of this section, the term "members other than the developer" shall not include builders, contractors, or others who purchase a parcel for the purpose of constructing improvements thereon for resale.

(2) Members other than the developer are entitled to elect at least one member of the board of directors of the homeowners' association if 50 percent of the parcels in all phases of the community which will ultimately be operated by the association have been conveyed to members other than the developer.

Section 24. Subsection (1) of section 720.311, Florida Statutes, is amended to read:

720.311 Dispute resolution.—

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for arbitration or the serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department under ~~pursuant to~~ s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(j) and 718.1255 and the rules adopted by the division. In addition, the department shall conduct ~~mandatory~~ binding arbitration of election disputes between a member and an association in



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accordance with ~~pursuant to~~ s. 718.1255 and rules adopted by the
division. ~~Neither~~ Election disputes and ~~nor~~ recall disputes are
not eligible for presuit mediation; these disputes must ~~shall~~ be
arbitrated by the department or filed in a court of competent
jurisdiction. At the conclusion of an arbitration ~~the~~
proceeding, the department shall charge the parties a fee in an
amount adequate to cover all costs and expenses incurred by the
department in conducting the proceeding. Initially, the
petitioner shall remit a filing fee of at least \$200 to the
department. The fees paid to the department shall become a
recoverable cost in the arbitration proceeding, and the
prevailing party in an arbitration proceeding shall recover its
reasonable costs and attorney ~~attorney's~~ fees in an amount found
reasonable by the arbitrator. The department shall adopt rules
to effectuate the purposes of this section.

Section 25. Subsection (6) is added to section 720.3075,
Florida Statutes, to read:

720.3075 Prohibited clauses in association documents.—

(6) An association may extinguish a discriminatory
restriction as provided in s. 712.065.

Section 26. Section 720.316, Florida Statutes, is amended
to read:

720.316 Association emergency powers.—

(1) To the extent allowed by law, unless specifically
prohibited by the declaration or other recorded governing
documents, and consistent with s. 617.0830, the board of
directors, in response to damage or injury caused by or
anticipated in connection with an emergency, as defined in s.
252.34(4), ~~event~~ for which a state of emergency is declared



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pursuant to s. 252.36 in the area encompassed by the association, may exercise the following powers:

(a) Conduct board meetings, committee meetings, elections, or membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication 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, electronic transmission, public service announcements, conspicuous posting on the common area association property, or any other means the board deems appropriate under the circumstances. Notice of decisions may also be communicated as provided in this paragraph.

(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 or an emergency plan before, during, 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



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or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine any portion of the common areas or facilities ~~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 public health officials or upon the advice of licensed professionals retained by or otherwise available to the board, determine whether the common areas or facilities ~~association property~~ can be safely inhabited, accessed, or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Mitigate further damage, injury, or contagion, 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 common areas or facilities or sanitizing the common areas or facilities ~~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



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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 mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit parcel owners, tenants, guests, agents, or invitees of a parcel owner from accessing the common areas and facilities for the purposes of ingress to and egress from the parcel when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a parcel; or

(b) The habitability of the parcel or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the parcel. Any such access is subject to reasonable restrictions adopted by the association.

Section 27. This act shall take effect July 1, 2021.

===== 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:



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A bill to be entitled

An act relating to community associations; amending s. 627.714, F.S.; prohibiting insurance policies from providing specified rights of subrogation under certain circumstances; amending s. 718.103, F.S.; revising the definition of the terms "multicondominium," "operation," and "operation of the condominium"; amending s. 718.111, F.S.; requiring that certain records be maintained for a specified time; prohibiting an association from requiring certain actions relating to the inspection of records; revising requirements relating to the posting of digital copies of certain documents by certain condominium associations; amending s. 718.112, F.S.; authorizing a condominium association to extinguish discriminatory restrictions; revising the calculation used in determining a board member's term limit; providing requirements for certain notices; revising the fees that an association may charge for transfers; deleting a prohibition against employing or contracting with certain service providers; amending s. 718.113, F.S.; revising legislative findings; defining the terms "natural gas fuel" and "natural gas fuel vehicle"; revising requirements for electric vehicle charging stations; providing requirements for natural gas fuel stations on property governed by condominium associations; amending s. 718.117, F.S.; conforming provisions to changes made by the act; amending s. 718.121, F.S.; providing that labor and



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2795 materials associated with the installation of a
2796 natural gas fuel station may not serve as the basis
2797 for filing a lien against an association but may serve
2798 as the basis for filing a lien against a unit owner;
2799 requiring that notices of intent to record a claim of
2800 lien specify certain dates; amending s. 718.1255,
2801 F.S.; authorizing parties to initiate presuit
2802 mediation under certain circumstances; specifying the
2803 circumstances under which arbitration is binding on
2804 the parties; providing requirements for presuit
2805 mediation; making technical changes; amending s.
2806 718.1265, F.S.; revising the emergency powers of
2807 condominium associations; prohibiting condominium
2808 associations from taking certain actions during a
2809 declared state of emergency; amending s. 718.202,
2810 F.S.; revising the allowable uses of certain escrow
2811 funds withdrawn by developers; defining the term
2812 "actual costs"; amending s. 718.303, F.S.; revising
2813 requirements for certain actions for failure to comply
2814 with specified provisions relating to condominium
2815 associations; revising requirements for certain fines;
2816 amending s. 718.405, F.S.; providing clarifying
2817 language relating to certain multicondominium
2818 declarations; providing applicability; amending s.
2819 718.501, F.S.; conforming provisions to changes made
2820 by the act; amending s. 718.5014, F.S.; revising a
2821 requirement regarding the location of the principal
2822 office of the Office of the Condominium Ombudsman;
2823 amending s. 719.103, F.S.; revising the definition of



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2824 the term "unit" to specify that an interest in a
2825 cooperative unit is an interest in real property;
2826 amending s. 719.104, F.S.; prohibiting an association
2827 from requiring certain actions relating to the
2828 inspection of records; amending s. 719.106, F.S.;
2829 revising provisions relating to a quorum and voting
2830 rights for members remotely participating in meetings;
2831 revising the procedure to challenge a board member
2832 recall; authorizing cooperative associations to
2833 extinguish discriminatory restrictions; amending s.
2834 719.128, F.S.; revising emergency powers for
2835 cooperative associations; prohibiting cooperative
2836 associations from taking certain actions during a
2837 declared state of emergency; amending s. 720.301,
2838 F.S.; revising the definition of the term "governing
2839 documents"; amending s. 720.303, F.S.; authorizing an
2840 association to adopt procedures for electronic meeting
2841 notices; revising the documents that constitute the
2842 official records of an association; revising the types
2843 of records that are not accessible to members or
2844 parcel owners; revising the circumstances under which
2845 a specified statement must be included in an
2846 association's financial report; revising requirements
2847 for such statement; revising the circumstances under
2848 which an association is deemed to have provided for
2849 reserve accounts; revising the procedure to challenge
2850 a board member recall; amending s. 720.305, F.S.;
2851 providing requirements for certain fines levied by a
2852 board of administration; amending s. 720.306, F.S.;



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2853 revising requirements for providing certain notices;
2854 providing limitations on associations when a parcel
2855 owner attempts to rent or lease his or her parcel;
2856 defining the term "affiliated entity"; amending the
2857 procedure for election disputes; amending s. 720.307,
2858 F.S.; revising the circumstances under which members
2859 other than the developer are entitled to elect members
2860 to the board of directors of the homeowners'
2861 association; amending s. 720.311, F.S.; revising the
2862 dispute resolution requirements for election disputes
2863 and recall disputes; amending s. 720.3075, F.S.;
2864 authorizing homeowners' associations to extinguish
2865 discriminatory restrictions; amending s. 720.316,
2866 F.S.; revising emergency powers of homeowners'
2867 associations; prohibiting homeowners' associations
2868 from taking certain actions during a declared state of
2869 emergency; providing an effective date.

By Senator Baxley

12-00203B-21

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1 A bill to be entitled
 2 An act relating to community associations; amending s.
 3 627.714, F.S.; prohibiting insurance policies from
 4 providing specified rights of subrogation under
 5 certain circumstances; amending s. 718.103, F.S.;
 6 revising the definition of the terms
 7 "multicondominium," "operation," and "operation of the
 8 condominium"; amending s. 718.111, F.S.; requiring
 9 that certain records be maintained for a specified
 10 time; requiring associations to maintain official
 11 records in a specified manner; requiring an
 12 association to provide an itemized list or affidavit
 13 relating to certain records to certain persons;
 14 requiring that such itemized list or affidavit be
 15 maintained for a time certain; creating a rebuttable
 16 presumption; prohibiting an association from requiring
 17 certain actions relating to the inspection of records;
 18 revising requirements relating to the posting of
 19 digital copies of certain documents by certain
 20 condominium associations; conforming cross-references;
 21 amending s. 718.112, F.S.; authorizing a condominium
 22 association to extinguish discriminatory restrictions;
 23 revising the calculation used in determining a board
 24 member's term limit; providing requirements for
 25 certain notices; revising the fees that an association
 26 may charge for transfers; deleting a prohibition
 27 against employing or contracting with certain service
 28 providers; amending s. 718.113, F.S.; revising
 29 legislative findings; defining the terms "natural gas

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30 fuel" and "natural gas fuel vehicle"; revising
 31 requirements for electric vehicle charging stations;
 32 providing requirements for natural gas fuel stations
 33 on property governed by condominium associations;
 34 amending s. 718.117, F.S.; conforming provisions to
 35 changes made by the act; amending s. 718.121, F.S.;
 36 providing that labor and materials associated with the
 37 installation of a natural gas fuel station may not
 38 serve as the basis for filing a lien against an
 39 association but may serve as the basis for filing a
 40 lien against a unit owner; requiring that notices of
 41 intent to record a claim of lien specify certain
 42 dates; amending s. 718.1255, F.S.; authorizing parties
 43 to initiate presuit mediation under certain
 44 circumstances; specifying the circumstances under
 45 which arbitration is binding on the parties; providing
 46 requirements for presuit mediation; making technical
 47 changes; amending s. 718.1265, F.S.; revising the
 48 emergency powers of condominium associations;
 49 prohibiting condominium associations from taking
 50 certain actions during a declared state of emergency;
 51 amending s. 718.202, F.S.; revising the allowable uses
 52 of certain escrow funds withdrawn by developers;
 53 defining the term "actual costs"; amending s. 718.303,
 54 F.S.; revising requirements for certain actions for
 55 failure to comply with specified provisions relating
 56 to condominium associations; revising requirements for
 57 certain fines; amending s. 718.405, F.S.; providing
 58 clarifying language relating to certain

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59 multicondominium declarations; providing
 60 applicability; amending s. 718.501, F.S.; defining the
 61 term "financial issue"; authorizing the Division of
 62 Condominiums, Timeshares, and Mobile Homes to adopt
 63 rules; conforming provisions to changes made by the
 64 act; amending s. 718.5014, F.S.; revising a
 65 requirement regarding the location of the principal
 66 office of the Office of the Condominium Ombudsman;
 67 amending s. 719.103, F.S.; revising the definition of
 68 the term "unit" to specify that an interest in a
 69 cooperative unit is an interest in real property;
 70 amending s. 719.104, F.S.; prohibiting an association
 71 from requiring certain actions relating to the
 72 inspection of records; amending s. 719.106, F.S.;
 73 revising provisions relating to a quorum and voting
 74 rights for members remotely participating in meetings;
 75 revising the procedure to challenge a board member
 76 recall; authorizing cooperative associations to
 77 extinguish discriminatory restrictions; amending s.
 78 719.128, F.S.; revising emergency powers for
 79 cooperative associations; prohibiting cooperative
 80 associations from taking certain actions during a
 81 declared state of emergency; amending s. 720.301,
 82 F.S.; revising the definition of the term "governing
 83 documents"; amending s. 720.303, F.S.; authorizing an
 84 association to adopt procedures for electronic meeting
 85 notices; revising the documents that constitute the
 86 official records of an association; revising the
 87 circumstances under which a specified statement must

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88 be included in an association's financial report;
 89 revising requirements for such statement; revising the
 90 circumstances under which an association is deemed to
 91 have provided for reserve accounts; revising the
 92 procedure to challenge a board member recall; amending
 93 s. 720.305, F.S.; providing requirements for certain
 94 fines levied by a board of administration; amending s.
 95 720.306, F.S.; revising requirements for providing
 96 certain notices; providing limitations on associations
 97 when a parcel owner attempts to rent or lease his or
 98 her parcel; defining the term "affiliated entity";
 99 amending the procedure for election disputes; amending
 100 s. 720.311, F.S.; revising the dispute resolution
 101 requirements for election disputes and recall
 102 disputes; amending s. 720.3075, F.S.; authorizing
 103 homeowners' associations to extinguish discriminatory
 104 restrictions; amending s. 720.316, F.S.; revising
 105 emergency powers of homeowners' associations;
 106 prohibiting homeowners' associations from taking
 107 certain actions during a declared state of emergency;
 108 providing an effective date.

109
 110 Be It Enacted by the Legislature of the State of Florida:

111
 112 Section 1. Subsection (4) of section 627.714, Florida
 113 Statutes, is amended to read:

114 627.714 Residential condominium unit owner coverage; loss
 115 assessment coverage required.-

116 (4) Every individual unit owner's residential property

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117 policy must contain a provision stating that the coverage
 118 afforded by such policy is excess coverage over the amount
 119 recoverable under any other policy covering the same property.
 120 If a condominium association's insurance policy does not provide
 121 rights for subrogation against the unit owners in the
 122 association, an insurance policy issued to an individual unit
 123 owner in the association may not provide rights of subrogation
 124 against the condominium association.

125 Section 2. Subsections (20) and (21) of section 718.103,
 126 Florida Statutes, are amended to read:

127 718.103 Definitions.—As used in this chapter, the term:

128 (20) "Multicondominium" means real property ~~a real estate~~
 129 ~~development~~ containing two or more condominiums, all of which
 130 are operated by the same association.

131 (21) "Operation" or "operation of the condominium" includes
 132 the administration and management of the condominium property
 133 and the association.

134 Section 3. Paragraph (a) of subsection (1) and paragraphs
 135 (a), (b), (c), (f), and (g) of subsection (12) of section
 136 718.111, Florida Statutes, are amended to read:

137 718.111 The association.—

138 (1) CORPORATE ENTITY.—

139 (a) The operation of the condominium shall be by the
 140 association, which must be a Florida corporation for profit or a
 141 Florida corporation not for profit. However, any association
 142 which was in existence on January 1, 1977, need not be
 143 incorporated. The owners of units shall be shareholders or
 144 members of the association. The officers and directors of the
 145 association have a fiduciary relationship to the unit owners. It

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146 is the intent of the Legislature that nothing in this paragraph
 147 shall be construed as providing for or removing a requirement of
 148 a fiduciary relationship between any manager employed by the
 149 association and the unit owners. An officer, director, or
 150 manager may not solicit, offer to accept, or accept any thing or
 151 service of value or kickback for which consideration has not
 152 been provided for his or her own benefit or that of his or her
 153 immediate family, from any person providing or proposing to
 154 provide goods or services to the association. Any such officer,
 155 director, or manager who knowingly so solicits, offers to
 156 accept, or accepts any thing or service of value or kickback is
 157 subject to a civil penalty pursuant to s. 718.501(2)(d) ~~or~~
 158 ~~718.501(1)(d)~~ and, if applicable, a criminal penalty as provided
 159 in paragraph (d). However, this paragraph does not prohibit an
 160 officer, director, or manager from accepting services or items
 161 received in connection with trade fairs or education programs.
 162 An association may operate more than one condominium.

163 (12) OFFICIAL RECORDS.—

164 (a) From the inception of the association, the association
 165 shall maintain each of the following items, if applicable, which
 166 constitutes the official records of the association:

- 167 1. A copy of the plans, permits, warranties, and other
- 168 items provided by the developer under ~~pursuant to~~ s. 718.301(4).
- 169 2. A photocopy of the recorded declaration of condominium
- 170 of each condominium operated by the association and each
- 171 amendment to each declaration.
- 172 3. A photocopy of the recorded bylaws of the association
- 173 and each amendment to the bylaws.
- 174 4. A certified copy of the articles of incorporation of the

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association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails

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to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under s. 718.501(2) (d) ~~pursuant to s. 718.501(1) (d)~~. The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. ~~All other written records of the association not specifically included in the foregoing which are related to the operation of the association.~~

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233 ~~16.~~ A copy of the inspection report as described in s.
 234 718.301(4)(p).
 235 ~~16.17.~~ Bids for materials, equipment, or services.
 236 17. All other written records of the association not
 237 specified in subparagraphs 1.-16. which are related to the
 238 operation of the association.
 239 (b) The official records specified in subparagraphs (a)1.-
 240 6. must be permanently maintained from the inception of the
 241 association. Bids for work to be performed or for materials,
 242 equipment, or services must be maintained for at least 1 year
 243 after receipt of the bid. All other official records must be
 244 maintained within the state for at least 7 years, unless
 245 otherwise provided by general law. All official records must be
 246 maintained in a manner and format determined by rules of the
 247 division so that the records are easily accessible for
 248 inspection. The records of the association shall be made
 249 available to a unit owner within 45 miles of the condominium
 250 property or within the county in which the condominium property
 251 is located within 10 working days after receipt of a written
 252 request by the board or its designee. However, such distance
 253 requirement does not apply to an association governing a
 254 timeshare condominium. This paragraph may be complied with by
 255 having a copy of the official records of the association
 256 available for inspection or copying on the condominium property
 257 or association property, or the association may offer the option
 258 of making the records available to a unit owner electronically
 259 via the Internet or by allowing the records to be viewed in
 260 electronic format on a computer screen and printed upon request.
 261 The association is not responsible for the use or misuse of the

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262 information provided to an association member or his or her
 263 authorized representative ~~in pursuant to the~~ compliance with
 264 ~~requirements of~~ this chapter unless the association has an
 265 affirmative duty not to disclose such information under ~~pursuant~~
 266 ~~to~~ this chapter.
 267 (c)1. The official records of the association are open to
 268 inspection by any association member or the authorized
 269 representative of such member at all reasonable times. The right
 270 to inspect the records includes the right to make or obtain
 271 copies, at the reasonable expense, if any, of the member or
 272 authorized representative of such member. A renter of a unit has
 273 a right to inspect and copy only the declaration of condominium
 274 and the association's bylaws and rules. The association must
 275 provide an itemized list to the member or the authorized
 276 representative of such member of all records that are made
 277 available for inspection and copying in response to a written
 278 request. Any of the association's official records that are
 279 unavailable must be identified as such on the itemized list. The
 280 accuracy of the itemized list must be certified by a manager
 281 licensed under part VIII of chapter 468, or a board member if
 282 there is no such manager, in a signed statement that, to the
 283 best of his or her knowledge and belief, the itemized list is
 284 accurate or by execution of a sworn affidavit by the association
 285 attesting to its accuracy. The association shall maintain a copy
 286 of the itemized list or the affidavit, as appropriate, for at
 287 least 7 years. Delivery of the itemized list or the affidavit,
 288 as appropriate, to the person requesting the records creates a
 289 rebuttable presumption that the association complied with this
 290 paragraph. The division may adopt by rule specific requirements

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291 for the itemized list. The association may adopt reasonable
 292 rules regarding the frequency, time, location, notice, and
 293 manner of record inspections and copying, but may not require a
 294 member to demonstrate any purpose or state any reason for the
 295 inspection. The failure of an association to provide the records
 296 within 10 working days after receipt of a written request
 297 creates a rebuttable presumption that the association willfully
 298 failed to comply with this paragraph. A unit owner who is denied
 299 access to official records is entitled to the actual damages or
 300 minimum damages for the association's willful failure to comply.
 301 Minimum damages are \$50 per calendar day for up to 10 days,
 302 beginning on the 11th working day after receipt of the written
 303 request. The failure to permit inspection entitles any person
 304 prevailing in an enforcement action to recover reasonable
 305 attorney fees from the person in control of the records who,
 306 directly or indirectly, knowingly denied access to the records.

307 2. Any person who knowingly or intentionally defaces or
 308 destroys accounting records that are required by this chapter to
 309 be maintained during the period for which such records are
 310 required to be maintained, or who knowingly or intentionally
 311 fails to create or maintain accounting records that are required
 312 to be created or maintained, with the intent of causing harm to
 313 the association or one or more of its members, is personally
 314 subject to a civil penalty under s. 718.501(2)(d) ~~pursuant to s.~~
 315 ~~718.501(1)(d).~~

316 3. The association shall maintain an adequate number of
 317 copies of the declaration, articles of incorporation, bylaws,
 318 and rules, and all amendments to each of the foregoing, as well
 319 as the question and answer sheet as described in s. 718.504 and

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320 year-end financial information required under this section, on
 321 the condominium property to ensure their availability to unit
 322 owners and prospective purchasers, and may charge its actual
 323 costs for preparing and furnishing these documents to those
 324 requesting the documents. An association shall allow a member or
 325 his or her authorized representative to use a portable device,
 326 including a smartphone, tablet, portable scanner, or any other
 327 technology capable of scanning or taking photographs, to make an
 328 electronic copy of the official records in lieu of the
 329 association's providing the member or his or her authorized
 330 representative with a copy of such records. The association may
 331 not charge a member or his or her authorized representative for
 332 the use of a portable device. Notwithstanding this paragraph,
 333 the following records are not accessible to unit owners:

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

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

347 c. Personnel records of association or management company
 348 employees, including, but not limited to, disciplinary, payroll,

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health, and insurance records. For purposes of this sub-paragraph, 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.

d. Medical records of unit owners.

e. 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 sub-subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers 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 sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-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.

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

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g. 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(2)(d)6. ~~s. 718.501(1)(d)6.~~ against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, ~~or~~ collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be

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accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which ~~that~~ contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents thereto. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or

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services which exceed \$500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

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1. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice ~~under pursuant to~~ s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents online. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted ~~under pursuant to~~ this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 4. Paragraphs (d), (i), (j), (k), and (p) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (c) is added to subsection (1) of that section, to read:

718.112 Bylaws.—

(1) GENERALLY.—

(c) The association may extinguish a discriminatory restriction as provided under s. 712.065.

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

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough

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523 eligible candidates to fill the vacancies on the board at the
 524 time of the vacancy. Only board service that occurs on or after
 525 July 1, 2018, may be used when calculating a board member's term
 526 limit. If the number of board members whose terms expire at the
 527 annual meeting equals or exceeds the number of candidates, the
 528 candidates become members of the board effective upon the
 529 adjournment of the annual meeting. Unless the bylaws provide
 530 otherwise, any remaining vacancies shall be filled by the
 531 affirmative vote of the majority of the directors making up the
 532 newly constituted board even if the directors constitute less
 533 than a quorum or there is only one director. In a residential
 534 condominium association of more than 10 units or in a
 535 residential condominium association that does not include
 536 timeshare units or timeshare interests, co-owners of a unit may
 537 not serve as members of the board of directors at the same time
 538 unless they own more than one unit or unless there are not
 539 enough eligible candidates to fill the vacancies on the board at
 540 the time of the vacancy. A unit owner in a residential
 541 condominium desiring to be a candidate for board membership must
 542 comply with sub-subparagraph 4.a. and must be eligible to be a
 543 candidate to serve on the board of directors at the time of the
 544 deadline for submitting a notice of intent to run in order to
 545 have his or her name listed as a proper candidate on the ballot
 546 or to serve on the board. A person who has been suspended or
 547 removed by the division under this chapter, or who is delinquent
 548 in the payment of any monetary obligation due to the
 549 association, is not eligible to be a candidate for board
 550 membership and may not be listed on the ballot. A person who has
 551 been convicted of any felony in this state or in a United States

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552 District or Territorial Court, or who has been convicted of any
 553 offense in another jurisdiction which would be considered a
 554 felony if committed in this state, is not eligible for board
 555 membership unless such felon's civil rights have been restored
 556 for at least 5 years as of the date such person seeks election
 557 to the board. The validity of an action by the board is not
 558 affected if it is later determined that a board member is
 559 ineligible for board membership due to having been convicted of
 560 a felony. This subparagraph does not limit the term of a member
 561 of the board of a nonresidential or timeshare condominium.

562 3. The bylaws must provide the method of calling meetings
 563 of unit owners, including annual meetings. Written notice of an
 564 annual meeting must include an agenda; ~~it must~~ be mailed, hand
 565 delivered, or electronically transmitted to each unit owner at
 566 least 14 days before the annual meeting; ~~it must~~ be posted in
 567 a conspicuous place on the condominium property or association
 568 property at least 14 continuous days before the annual meeting.
 569 Written notice of a meeting other than an annual meeting must
 570 include an agenda; be mailed, hand delivered, or electronically
 571 transmitted to each unit owner; and be posted in a conspicuous
 572 place on the condominium property or association property within
 573 the timeframe specified in the bylaws. If the bylaws do not
 574 specify a timeframe for written notice of a meeting other than
 575 an annual meeting, notice must be provided at least 14
 576 continuous days before the meeting. Upon notice to the unit
 577 owners, the board shall, by duly adopted rule, designate a
 578 specific location on the condominium property or association
 579 property where all notices of unit owner meetings must be
 580 posted. This requirement does not apply if there is no

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581 condominium property for posting notices. In lieu of, or in
 582 addition to, the physical posting of meeting notices, the
 583 association may, by reasonable rule, adopt a procedure for
 584 conspicuously posting and repeatedly broadcasting the notice and
 585 the agenda on a closed-circuit cable television system serving
 586 the condominium association. However, if broadcast notice is
 587 used in lieu of a notice posted physically on the condominium
 588 property, the notice and agenda must be broadcast at least four
 589 times every broadcast hour of each day that a posted notice is
 590 otherwise required under this section. If broadcast notice is
 591 provided, the notice and agenda must be broadcast in a manner
 592 and for a sufficient continuous length of time so as to allow an
 593 average reader to observe the notice and read and comprehend the
 594 entire content of the notice and the agenda. In addition to any
 595 of the authorized means of providing notice of a meeting of the
 596 board, the association may, by rule, adopt a procedure for
 597 conspicuously posting the meeting notice and the agenda on a
 598 website serving the condominium association for at least the
 599 minimum period of time for which a notice of a meeting is also
 600 required to be physically posted on the condominium property.
 601 Any rule adopted shall, in addition to other matters, include a
 602 requirement that the association send an electronic notice in
 603 the same manner as a notice for a meeting of the members, which
 604 must include a hyperlink to the website where the notice is
 605 posted, to unit owners whose e-mail addresses are included in
 606 the association's official records. Unless a unit owner waives
 607 in writing the right to receive notice of the annual meeting,
 608 such notice must be hand delivered, mailed, or electronically
 609 transmitted to each unit owner. Notice for meetings and notice

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610 for all other purposes must be mailed to each unit owner at the
 611 address last furnished to the association by the unit owner, or
 612 hand delivered to each unit owner. However, if a unit is owned
 613 by more than one person, the association must provide notice to
 614 the address that the developer identifies for that purpose and
 615 thereafter as one or more of the owners of the unit advise the
 616 association in writing, or if no address is given or the owners
 617 of the unit do not agree, to the address provided on the deed of
 618 record. An officer of the association, or the manager or other
 619 person providing notice of the association meeting, must provide
 620 an affidavit or United States Postal Service certificate of
 621 mailing, to be included in the official records of the
 622 association affirming that the notice was mailed or hand
 623 delivered in accordance with this provision.

624 4. The members of the board of a residential condominium
 625 shall be elected by written ballot or voting machine. Proxies
 626 may not be used in electing the board in general elections or
 627 elections to fill vacancies caused by recall, resignation, or
 628 otherwise, unless otherwise provided in this chapter. This
 629 subparagraph does not apply to an association governing a
 630 timeshare condominium.

631 a. At least 60 days before a scheduled election, the
 632 association shall mail, deliver, or electronically transmit, by
 633 separate association mailing or included in another association
 634 mailing, delivery, or transmission, including regularly
 635 published newsletters, to each unit owner entitled to a vote, a
 636 first notice of the date of the election. A unit owner or other
 637 eligible person desiring to be a candidate for the board must
 638 give written notice of his or her intent to be a candidate to

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639 the association at least 40 days before a scheduled election.
 640 Together with the written notice and agenda as set forth in
 641 subparagraph 3., the association shall mail, deliver, or
 642 electronically transmit a second notice of the election to all
 643 unit owners entitled to vote, together with a ballot that lists
 644 all candidates not less than 14 days or more than 34 days before
 645 the date of the election. Upon request of a candidate, an
 646 information sheet, no larger than 8 1/2 inches by 11 inches,
 647 which must be furnished by the candidate at least 35 days before
 648 the election, must be included with the mailing, delivery, or
 649 transmission of the ballot, with the costs of mailing, delivery,
 650 or electronic transmission and copying to be borne by the
 651 association. The association is not liable for the contents of
 652 the information sheets prepared by the candidates. In order to
 653 reduce costs, the association may print or duplicate the
 654 information sheets on both sides of the paper. The division
 655 shall by rule establish voting procedures consistent with this
 656 sub-subparagraph, including rules establishing procedures for
 657 giving notice by electronic transmission and rules providing for
 658 the secrecy of ballots. Elections shall be decided by a
 659 plurality of ballots cast. There is no quorum requirement;
 660 however, at least 20 percent of the eligible voters must cast a
 661 ballot in order to have a valid election. A unit owner may not
 662 authorize any other person to vote his or her ballot, and any
 663 ballots improperly cast are invalid. A unit owner who violates
 664 this provision may be fined by the association in accordance
 665 with s. 718.303. A unit owner who needs assistance in casting
 666 the ballot for the reasons stated in s. 101.051 may obtain such
 667 assistance. The regular election must occur on the date of the

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668 annual meeting. Notwithstanding this sub-subparagraph, an
 669 election is not required unless more candidates file notices of
 670 intent to run or are nominated than board vacancies exist.
 671 b. Within 90 days after being elected or appointed to the
 672 board of an association of a residential condominium, each newly
 673 elected or appointed director shall certify in writing to the
 674 secretary of the association that he or she has read the
 675 association's declaration of condominium, articles of
 676 incorporation, bylaws, and current written policies; that he or
 677 she will work to uphold such documents and policies to the best
 678 of his or her ability; and that he or she will faithfully
 679 discharge his or her fiduciary responsibility to the
 680 association's members. In lieu of this written certification,
 681 within 90 days after being elected or appointed to the board,
 682 the newly elected or appointed director may submit a certificate
 683 of having satisfactorily completed the educational curriculum
 684 administered by a division-approved condominium education
 685 provider within 1 year before or 90 days after the date of
 686 election or appointment. The written certification or
 687 educational certificate is valid and does not have to be
 688 resubmitted as long as the director serves on the board without
 689 interruption. A director of an association of a residential
 690 condominium who fails to timely file the written certification
 691 or educational certificate is suspended from service on the
 692 board until he or she complies with this sub-subparagraph. The
 693 board may temporarily fill the vacancy during the period of
 694 suspension. The secretary shall cause the association to retain
 695 a director's written certification or educational certificate
 696 for inspection by the members for 5 years after a director's

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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.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium 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 bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass e-mails ~~emails~~ sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items.

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However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any 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 sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different

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voting and election procedures in its bylaws, which 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.

(i) *Transfer fees.*—~~An association may not~~ charge a fee ~~shall be made by the association or any body thereof in~~ connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but may not in no event may such fee exceed \$150 ~~\$100~~ per applicant. For the purpose of calculating the fee, spouses or a parent or parents and any dependent children other than ~~husband/wife or parent/dependent child, which~~ are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, a charge may not ~~no charge shall~~ be made. Such fees must be adjusted every 5 years in an amount equal to the total of the annual increases occurring in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items during that 5-year period. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website. The foregoing notwithstanding, ~~an association may~~, if the authority to do so appears in the declaration, articles, or bylaws, an association may require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1 month's rent, into an escrow account maintained

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by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83.

(j) *Recall of board members.*—Subject to s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. Such member or members shall be recalled effective immediately upon conclusion of the board meeting, provided that the recall is facially valid. A recalled member must turn over to the board, within 10 full business days after the vote, any and all records and property of the association in their possession.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or

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a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. Such member or members shall be recalled effective immediately upon the conclusion of the board meeting, provided that the recall is facially valid. A recalled member must turn over to the board, within 10 full business days, any and all records and property of the association in their possession.

3. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall is ~~shall be~~ deemed effective and the board members so recalled shall turn over to the board within 10 full business days after the vote any and all records and property of the association.

4. If the board fails to duly notice and hold the required meeting or at the conclusion of the meeting determines that the recall is not facially valid, the unit owner representative may file a petition or court action under ~~pursuant to~~ s. 718.1255 challenging the board's failure to act or challenging the board's determination on facial validity. The petition or action must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

5. If a vacancy occurs on the board as a result of a recall

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or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

6. A board member who has been recalled may file a petition or court action under ~~pursuant to~~ s. 718.1255 challenging the validity of the recall. The petition or action must be filed within 60 days after the recall. The association and the unit owner representative shall be named as the respondents. The petition or action may challenge the facial validity of the written agreement or ballots filed or the substantial compliance with the procedural requirements for the recall. If the arbitrator or court determines the recall was invalid, the petitioning board member shall immediately be reinstated and the recall is null and void. A board member who is successful in challenging a recall is entitled to recover reasonable attorney fees and costs from the respondents. The arbitrator or court may award reasonable attorney fees and costs to the respondents if they prevail, if the arbitrator or court makes a finding that the petitioner's claim is frivolous.

7. The division or a court of competent jurisdiction may

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not accept for filing a recall petition or court action, whether filed ~~under pursuant to~~ subparagraph 1., subparagraph 2., subparagraph 4., or subparagraph 6., when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

(k) ~~Alternative dispute resolution Arbitration.~~ There must ~~shall~~ be a provision for alternative dispute resolution ~~mandatory nonbinding arbitration~~ as provided for in s. 718.1255 for any residential condominium.

~~(p) Service providers; conflicts of interest. An association, which is not a timeshare condominium association, may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. This paragraph does not apply to a service provider in which a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.~~

Section 5. Subsection (8) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.—

(8) The Legislature finds that the use of electric and natural gas fuel vehicles conserves and protects the state's environmental resources, provides significant economic savings

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to drivers, and serves an important public interest. The participation of condominium associations is essential to the state's efforts to conserve and protect the state's environmental resources and provide economic savings to drivers. For purposes of this subsection, the term "natural gas fuel" has the same meaning as in s. 206.9951, and the term "natural gas fuel vehicle" means any motor vehicle, as defined in s. 320.01, that is powered by natural gas fuel. Therefore, the installation of an electric vehicle charging station or a natural gas fuel station shall be governed as follows:

(a) A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station or a natural gas fuel station within the boundaries of the unit owner's limited common element or exclusively designated parking area. The board of administration of a condominium association may not prohibit a unit owner from installing an electric vehicle charging station for an electric vehicle, as defined in s. 320.01, or a natural gas fuel station for a natural gas fuel vehicle within the boundaries of his or her limited common element or exclusively designated parking area. The installation of such charging or fuel stations are subject to the provisions of this subsection.

(b) The installation may not cause irreparable damage to the condominium property.

(c) The electricity for the electric vehicle charging station or natural gas fuel station must be separately metered or metered by an embedded meter and payable by the unit owner installing such charging or fuel station or by his or her

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929 successor.

930 (d) The cost for supply and storage of the natural gas fuel
 931 must be paid by the unit owner installing the natural gas fuel
 932 station or by his or her successor.

933 (e) ~~(d)~~ The unit owner who is installing an electric vehicle
 934 charging station or a natural gas fuel station is responsible
 935 for the costs of installation, operation, maintenance, and
 936 repair, including, but not limited to, hazard and liability
 937 insurance. The association may enforce payment of such costs
 938 under ~~pursuant to~~ s. 718.116.

939 (f) ~~(e)~~ If the unit owner or his or her successor decides
 940 there is no longer a need for the electric ~~electronic~~ vehicle
 941 charging station or natural gas fuel station, such person is
 942 responsible for the cost of removal of such ~~the electronic~~
 943 vehicle charging or fuel station. The association may enforce
 944 payment of such costs under ~~pursuant to~~ s. 718.116.

945 (g) The unit owner installing, maintaining, or removing the
 946 electric vehicle charging station or natural gas fuel station is
 947 responsible for complying with all federal, state, or local laws
 948 and regulations applicable to such installation, maintenance, or
 949 removal.

950 (h) ~~(f)~~ The association may require the unit owner to:

951 1. Comply with bona fide safety requirements, consistent
 952 with applicable building codes or recognized safety standards,
 953 for the protection of persons and property.

954 2. Comply with reasonable architectural standards adopted
 955 by the association that govern the dimensions, placement, or
 956 external appearance of the electric vehicle charging station or
 957 natural gas fuel station, provided that such standards may not

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958 prohibit the installation of such charging or fuel station or
 959 substantially increase the cost thereof.

960 3. Engage the services of a licensed and registered firm
 961 ~~electrical contractor or engineer~~ familiar with the installation
 962 or removal and core requirements of an electric vehicle charging
 963 station or a natural gas fuel station.

964 4. Provide a certificate of insurance naming the
 965 association as an additional insured on the owner's insurance
 966 policy for any claim related to the installation, maintenance,
 967 or use of the electric vehicle charging station or natural gas
 968 fuel station within 14 days after receiving the association's
 969 approval to install such charging or fuel station or notice to
 970 provide such a certificate.

971 5. Reimburse the association for the actual cost of any
 972 increased insurance premium amount attributable to the electric
 973 vehicle charging station or natural gas fuel station within 14
 974 days after receiving the association's insurance premium
 975 invoice.

976 (i) ~~(g)~~ The association provides an implied easement across
 977 the common elements of the condominium property to the unit
 978 owner for purposes of ~~the installation of the~~ electric vehicle
 979 charging station or natural gas fuel station installation, and
 980 the furnishing of electrical power or natural gas fuel supply,
 981 including any necessary equipment, to such charging or fuel
 982 station, subject to the requirements of this subsection.

983 Section 6. Subsection (16) of section 718.117, Florida
 984 Statutes, is amended to read:

985 718.117 Termination of condominium.—

986 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest a

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987 plan of termination by initiating a petition in accordance with
 988 ~~for mandatory nonbinding arbitration pursuant to s. 718.1255~~
 989 within 90 days after the date the plan is recorded. A unit owner
 990 or lienor may only contest the fairness and reasonableness of
 991 the apportionment of the proceeds from the sale among the unit
 992 owners, that the liens of the first mortgages of unit owners
 993 other than the bulk owner have not or will not be satisfied to
 994 the extent required by subsection (3), or that the required vote
 995 to approve the plan was not obtained. A unit owner or lienor who
 996 does not contest the plan within the 90-day period is barred
 997 from asserting or prosecuting a claim against the association,
 998 the termination trustee, any unit owner, or any successor in
 999 interest to the condominium property. In an action contesting a
 1000 plan of termination, the person contesting the plan has the
 1001 burden of pleading and proving that the apportionment of the
 1002 proceeds from the sale among the unit owners was not fair and
 1003 reasonable or that the required vote was not obtained. The
 1004 apportionment of sale proceeds is presumed fair and reasonable
 1005 if it was determined pursuant to the methods prescribed in
 1006 subsection (12). If the petition is filed with the division for
 1007 arbitration, the arbitrator shall determine the rights and
 1008 interests of the parties in the apportionment of the sale
 1009 proceeds. If the arbitrator determines that the apportionment of
 1010 sales proceeds is not fair and reasonable, the arbitrator may
 1011 void the plan or may modify the plan to apportion the proceeds
 1012 in a fair and reasonable manner pursuant to this section based
 1013 upon the proceedings and order the modified plan of termination
 1014 to be implemented. If the arbitrator determines that the plan
 1015 was not properly approved, or that the procedures to adopt the

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1016 plan were not properly followed, the arbitrator may void the
 1017 plan or grant other relief it deems just and proper. The
 1018 arbitrator shall automatically void the plan upon a finding that
 1019 any of the disclosures required in subparagraph (3)(c)5. are
 1020 omitted, misleading, incomplete, or inaccurate. Any challenge to
 1021 a plan, other than a challenge that the required vote was not
 1022 obtained, does not affect title to the condominium property or
 1023 the vesting of the condominium property in the trustee, but
 1024 shall only be a claim against the proceeds of the plan. In any
 1025 such action, the prevailing party shall recover reasonable
 1026 attorney fees and costs.

1027 Section 7. Subsections (2) and (4) of section 718.121,
 1028 Florida Statutes, are amended to read:

1029 718.121 Liens.—

1030 (2) Labor performed on or materials furnished to a unit may
 1031 ~~shall~~ not be the basis for the filing of a lien under pursuant
 1032 ~~to~~ part I of chapter 713, the Construction Lien Law, against the
 1033 unit or condominium parcel of any unit owner not expressly
 1034 consenting to or requesting the labor or materials. Labor
 1035 performed on or materials furnished for the installation of a
 1036 natural gas fuel station or an electric electronic vehicle
 1037 charging station under pursuant to s. 718.113(8) may not be the
 1038 basis for filing a lien under part I of chapter 713 against the
 1039 association, but such a lien may be filed against the unit
 1040 owner. Labor performed on or materials furnished to the common
 1041 elements are not the basis for a lien on the common elements,
 1042 but if authorized by the association, the labor or materials are
 1043 deemed to be performed or furnished with the express consent of
 1044 each unit owner and may be the basis for the filing of a lien

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against all condominium parcels in the proportions for which the owners are liable for common expenses.

(4) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, and by first-class United States mail to the owner at his or her last address as reflected in the records of the association, if the address is within the United States, and delivered to the owner at the address of the unit if the owner's address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient. ~~Delivery of the Notice is shall be deemed to have been delivered given~~ upon mailing as required by this subsection, provided that it is. ~~The notice must be~~ in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property

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no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	\$.....
Late fee, if applicable	\$.....
Interest through ...(dates)...*	\$.....
Certified mail charges <u>...(dates)...</u>	\$.....
Other costs	\$.....
TOTAL OUTSTANDING	\$.....

*Interest accrues at the rate of percent per annum.

Section 8. Section 718.1255, Florida Statutes, is amended to read:

718.1255 Alternative dispute resolution; ~~voluntary~~ mediation; ~~mandatory~~ nonbinding arbitration; legislative findings.—

(1) DEFINITIONS.—As used in this section, the term "dispute" means any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under this chapter or association document, to:

1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.

2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.

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- 1103 2. Give adequate notice of meetings or other actions.
 1104 3. Properly conduct meetings.
 1105 4. Allow inspection of books and records.
 1106 (c) A plan of termination pursuant to s. 718.117.

1107
 1108 "Dispute" does not include any disagreement that primarily
 1109 involves: title to any unit or common element; the
 1110 interpretation or enforcement of any warranty; the levy of a fee
 1111 or assessment, or the collection of an assessment levied against
 1112 a party; the eviction or other removal of a tenant from a unit;
 1113 alleged breaches of fiduciary duty by one or more directors; or
 1114 claims for damages to a unit based upon the alleged failure of
 1115 the association to maintain the common elements or condominium
 1116 property.

1117 (2) ~~VOLUNTARY~~ MEDIATION.—~~Voluntary~~ Mediation through
 1118 Citizen Dispute Settlement Centers as provided for in s. 44.201
 1119 is encouraged.

1120 (3) LEGISLATIVE FINDINGS.—

1121 (a) The Legislature finds that unit owners are frequently
 1122 at a disadvantage when litigating against an association.
 1123 Specifically, a condominium association, with its statutory
 1124 assessment authority, is often more able to bear the costs and
 1125 expenses of litigation than the unit owner who must rely on his
 1126 or her own financial resources to satisfy the costs of
 1127 litigation against the association.

1128 (b) The Legislature finds that alternative dispute
 1129 resolution has been making progress in reducing court dockets
 1130 and trials and in offering a more efficient, cost-effective
 1131 option to court litigation. However, the Legislature also finds

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1132 that alternative dispute resolution should not be used as a
 1133 mechanism to encourage the filing of frivolous or nuisance
 1134 suits.

1135 (c) There exists a need to develop a flexible means of
 1136 alternative dispute resolution that directs disputes to the most
 1137 efficient means of resolution.

1138 (d) The high cost and significant delay of circuit court
 1139 litigation faced by unit owners in the state can be alleviated
 1140 by requiring nonbinding arbitration and mediation in appropriate
 1141 cases, thereby reducing delay and attorney ~~attorney's~~ fees while
 1142 preserving the right of either party to have its case heard by a
 1143 jury, if applicable, in a court of law.

1144 (4) ~~MANDATORY~~ NONBINDING ARBITRATION AND MEDIATION OF
 1145 DISPUTES.—The Division of Florida Condominiums, Timeshares, and
 1146 Mobile Homes of the Department of Business and Professional
 1147 Regulation may employ full-time attorneys to act as arbitrators
 1148 to conduct the arbitration hearings provided by this chapter.
 1149 The division may also certify attorneys who are not employed by
 1150 the division to act as arbitrators to conduct the arbitration
 1151 hearings provided by this chapter. A ~~No~~ person may not be
 1152 employed by the department as a full-time arbitrator unless he
 1153 or she is a member in good standing of The Florida Bar. A person
 1154 may only be certified by the division to act as an arbitrator if
 1155 he or she has been a member in good standing of The Florida Bar
 1156 for at least 5 years and has mediated or arbitrated at least 10
 1157 disputes involving condominiums in this state during the 3 years
 1158 immediately preceding the date of application, mediated or
 1159 arbitrated at least 30 disputes in any subject area in this
 1160 state during the 3 years immediately preceding the date of

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application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar. Arbitrator certification is valid for 1 year. An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed. The department may not enter into a legal services contract for an arbitration hearing under this chapter with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute. The department shall adopt rules of procedure to govern such arbitration hearings including mediation incident thereto. The decision of an arbitrator ~~is shall be~~ final; however, a decision ~~is shall~~ not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator ~~is shall be~~ admissible in evidence in the trial de novo.

(a) ~~Before~~ Prior to the institution of court litigation, a party to a dispute, other than an election or recall dispute, shall either petition the division for nonbinding arbitration or initiate presuit mediation as provided in subsection (5). Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in arbitration. The petition must be accompanied by a filing fee in the amount of \$50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program.

(b) The petition must recite, and have attached thereto,

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supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;

2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition upon all respondents. The arbitrator shall conduct a hearing within 30 days after being assigned or entering into a contract unless the

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petition is withdrawn or a continuance is granted for good cause shown.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorney fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the

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physical presence of the party or its representative having full authority to settle without further consultation, provided that an association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board of administration ratify and approve such a settlement within 5 days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless they agree otherwise.

(g) The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal,

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and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorney fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located

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within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney fees incurred in the arbitration proceeding as well as the costs and reasonable attorney fees incurred in preparing for and attending any scheduled mediation. An arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall

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1335 recover reasonable attorney fees and costs incurred in enforcing
 1336 the arbitration award. A mediation settlement may also be
 1337 enforced through the county or circuit court, as applicable, and
 1338 any costs and fees incurred in the enforcement of a settlement
 1339 agreement reached at mediation must be awarded to the prevailing
 1340 party in any enforcement action.

1341 (5) PRESUIT MEDIATION.—In lieu of the initiation of
 1342 nonbinding arbitration as provided in subsections (1)-(4), a
 1343 party may submit a dispute to presuit mediation in accordance
 1344 with s. 720.311; however, election and recall disputes are not
 1345 eligible for mediation and such disputes must be arbitrated by
 1346 the division or filed in a court of competent jurisdiction.

1347 (6) DISPUTES INVOLVING ELECTION IRREGULARITIES.—Every
 1348 arbitration petition received by the division and required to be
 1349 filed under this section challenging the legality of the
 1350 election of any director of the board of administration must be
 1351 handled on an expedited basis in the manner provided by the
 1352 division's rules for recall arbitration disputes.

1353 (7) ~~(6)~~ APPLICABILITY.—This section does not apply to a
 1354 nonresidential condominium unless otherwise specifically
 1355 provided for in the declaration of the nonresidential
 1356 condominium.

1357 Section 9. Section 718.1265, Florida Statutes, is amended
 1358 to read:

1359 718.1265 Association emergency powers.—

1360 (1) To the extent allowed by law, ~~and~~ unless specifically
 1361 prohibited by the declaration of condominium, the articles, or
 1362 the bylaws of an association, and consistent with ~~the provisions~~
 1363 of s. 617.0830, the board of administration, in response to

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1364 damage or injury caused by or anticipated in connection with an
 1365 emergency, as defined in s. 252.34(4), event for which a state
 1366 of emergency is declared pursuant to s. 252.36 in the locale in
 1367 which the condominium is located, may, ~~but is not required to,~~
 1368 exercise the following powers:

1369 (a) Conduct board meetings, committee meetings, elections,
 1370 and membership meetings, in whole or in part, by telephone,
 1371 real-time videoconferencing, or similar real-time electronic or
 1372 video communication with notice given as is practicable. Such
 1373 notice may be given in any practicable manner, including
 1374 publication, radio, United States mail, the Internet, electronic
 1375 transmission, public service announcements, and conspicuous
 1376 posting on the condominium property or association property or
 1377 any other means the board deems reasonable under the
 1378 circumstances. Notice of ~~board~~ decisions also may be
 1379 communicated as provided in this paragraph.

1380 (b) Cancel and reschedule any association meeting.

1381 (c) Name as assistant officers persons who are not
 1382 directors, which assistant officers shall have the same
 1383 authority as the executive officers to whom they are assistants
 1384 during the state of emergency to accommodate the incapacity or
 1385 unavailability of any officer of the association.

1386 (d) Relocate the association's principal office or
 1387 designate alternative principal offices.

1388 (e) Enter into agreements with local counties and
 1389 municipalities to assist counties and municipalities with debris
 1390 removal.

1391 (f) Implement a disaster plan or an emergency plan before,
 1392 during, or ~~immediately~~ following the event for which a state of

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1393 emergency is declared which may include, but is not limited to,
 1394 shutting down or off elevators; electricity; water, sewer, or
 1395 security systems; or air conditioners.

1396 (g) Based upon advice of emergency management officials or
 1397 public health officials, or upon the advice of licensed
 1398 professionals retained by or otherwise available to the board,
 1399 determine any portion of the condominium property or association
 1400 property unavailable for entry or occupancy by unit owners,
 1401 family members, tenants, guests, agents, or invitees to protect
 1402 the health, safety, or welfare of such persons.

1403 (h) Require the evacuation of the condominium property in
 1404 the event of a mandatory evacuation order in the locale in which
 1405 the condominium is located. Should any unit owner or other
 1406 occupant of a condominium fail or refuse to evacuate the
 1407 condominium property or association property where the board has
 1408 required evacuation, the association shall be immune from
 1409 liability or injury to persons or property arising from such
 1410 failure or refusal.

1411 (i) Based upon advice of emergency management officials or
 1412 public health officials, or upon the advice of licensed
 1413 professionals retained by or otherwise available to the board,
 1414 determine whether the condominium property, association
 1415 property, or any portion thereof can be safely inhabited,
 1416 accessed, or occupied. However, such determination is not
 1417 conclusive as to any determination of habitability pursuant to
 1418 the declaration.

1419 (j) Mitigate further damage, injury, or contagion,
 1420 including taking action to contract for the removal of debris
 1421 and to prevent or mitigate the spread of fungus or contagion,

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1422 including, but not limited to, mold or mildew, by removing and
 1423 disposing of wet drywall, insulation, carpet, cabinetry, or
 1424 other fixtures on or within the condominium property, even if
 1425 the unit owner is obligated by the declaration or law to insure
 1426 or replace those fixtures and to remove personal property from a
 1427 unit.

1428 (k) Contract, on behalf of any unit owner or owners, for
 1429 items or services for which the owners are otherwise
 1430 individually responsible, but which are necessary to prevent
 1431 further injury, contagion, or damage to the condominium property
 1432 or association property. In such event, the unit owner or owners
 1433 on whose behalf the board has contracted are responsible for
 1434 reimbursing the association for the actual costs of the items or
 1435 services, and the association may use its lien authority
 1436 provided by s. 718.116 to enforce collection of the charges.
 1437 Without limitation, such items or services may include the
 1438 drying of units, the boarding of broken windows or doors, ~~and~~
 1439 the replacement of damaged air conditioners or air handlers to
 1440 provide climate control in the units or other portions of the
 1441 property, and the sanitizing of the condominium property or
 1442 association property, as applicable.

1443 (l) Regardless of any provision to the contrary and even if
 1444 such authority does not specifically appear in the declaration
 1445 of condominium, articles, or bylaws of the association, levy
 1446 special assessments without a vote of the owners.

1447 (m) Without unit owners' approval, borrow money and pledge
 1448 association assets as collateral to fund emergency repairs and
 1449 carry out the duties of the association when operating funds are
 1450 insufficient. This paragraph does not limit the general

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authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.

(2) The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit and when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a unit;
or

(b) The habitability of the unit or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.

Section 10. Subsection (3) of section 718.202, Florida Statutes, is amended to read:

718.202 Sales or reservation deposits prior to closing.—

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(3) If the contract for sale of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He or she may use the funds for the actual costs incurred by the developer in the ~~actual~~ construction and development of the condominium property in which the unit to be sold is located. For purposes of this subsection, the term "actual costs" includes, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons; ~~or~~ for advertising, marketing, or promotional purposes; or for loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

Section 11. Subsection (1) and paragraph (b) of subsection (3) of section 718.303, Florida Statutes, are amended to read:

718.303 Obligations of owners and occupants; remedies.—

(1) Each unit owner, ~~each~~ tenant and other invitee, and ~~each~~ association is governed by, and must comply with the

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provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which are ~~shall be deemed~~ expressly incorporated into any lease of a unit. Actions at law or in equity for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

(e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1)(a) is entitled to recover reasonable attorney ~~attorney's~~ fees. A unit owner prevailing in an action between the association and the unit owner under this subsection ~~section~~, in addition to recovering his or her reasonable attorney ~~attorney's~~ fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. Actions arising under this subsection are not considered ~~may not be deemed to be~~ actions for specific

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performance.

(3) The association may levy reasonable fines for the failure of the owner of the unit or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed \$100 per violation, or \$1,000 in the aggregate.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice to the unit owner and, if applicable, any tenant occupant, licensee, or invitee of the unit owner sought to be fined or suspended, and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not approve the proposed fine or suspension by majority vote, the fine or suspension may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner ~~the date of the committee meeting at which the fine is approved~~. The association must provide written notice of such fine or suspension by mail or

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hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

Section 12. Subsection (5) is added to section 718.405, Florida Statutes, to read:

718.405 Multicondominiums; multicondominium associations.—

(5) This section does not prevent or restrict a multicondominium association from adopting a consolidated or combined declaration of condominium if such declaration complies with s. 718.104 and does not serve to merge the condominiums or change the legal descriptions of the condominium parcels as set forth in s. 718.109, unless accomplished in accordance with law. This section is intended to clarify existing law and applies to associations existing on July 1, 2021.

Section 13. Section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) As used in this section, the term "financial issue" means an issue related to operating budgets; reserve schedules; accounting records maintained under s. 718.111(12)(a)11.; notices of budget meetings and minutes of meetings discussing budget or financial issues; assessments for common expenses, fees, or fines; the commingling of funds; and any other record necessary to determine the revenues and expenses of the association. The division may adopt rules to further specify what is included within the meaning of the term.

(2)(1) The division may enforce and ensure compliance with ~~the provisions of~~ this chapter and rules relating to the development, construction, sale, lease, ownership, operation,

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and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and the maintenance of and unit owner access to association records under ~~pursuant to~~ s. 718.111(12).

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a

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matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

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2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer, fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any

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association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under ~~pursuant to~~ subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed under ~~pursuant to~~ subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly

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violates ~~a provision of~~ this chapter, adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed \$5,000. ~~By January 1, 1998,~~ The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible

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mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner

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again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least \$500 but no more than \$5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney ~~attorney's~~ fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce ~~the provisions of~~ this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays

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the fees required by paragraph (3)(a) ~~(2)(a)~~ a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner. The division may adopt rules to establish requirements for such training and educational programs.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in alternative dispute resolution ~~arbitration~~ proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of

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training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the

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complainant, the division shall inform the complainant of any right to a hearing under ~~pursuant to~~ ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under ~~pursuant to~~ this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or
2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the

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President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

(3) (a) (2) (a) Each condominium association which operates more than two units shall pay to the division an annual fee in the amount of \$4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

Section 14. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office in a ~~Leon County on the premises of~~

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the division or, if suitable space cannot be provided there, at another place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 15. Subsection (25) of section 719.103, Florida Statutes, is amended to read:

719.103 Definitions.—As used in this chapter:

(25) "Unit" means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents. An interest in a unit is an interest in real property.

Section 16. Paragraph (c) of subsection (2) of section 719.104, Florida Statutes, is amended 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, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10

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working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A ~~member 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 under ~~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 members ~~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

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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 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 members ~~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

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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 unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers 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.

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Section 17. Paragraphs (b), (f), and (l) of subsection (1) of section 719.106, Florida Statutes, are amended, and subsection (3) is added to that section, 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:

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

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

2. Except as specifically otherwise provided herein, after January 1, 1992, 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. 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 (j)2., for votes taken to waive the financial reporting requirements of s. 719.104(4)(b), 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), after

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January 1, 1992, no proxy, limited or general, shall 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 also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this section, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare cooperative.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be 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 and may not be used for the purposes of creating a quorum.

5. A board member or committee member participating 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 ~~When some or all of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum~~

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2089 ~~and may vote by telephone.~~ A telephone speaker must ~~shall~~ be
 2090 ~~used~~ ~~utilized~~ so that the conversation of ~~such these board or~~
 2091 ~~committee members attending by telephone~~ may be heard by the
 2092 board or committee members attending in person, as well as by
 2093 any unit owners present at a meeting.

2094 (f) *Recall of board members.*—Subject to s. 719.301, any
 2095 member of the board of administration may be recalled and
 2096 removed from office with or without cause by the vote or
 2097 agreement in writing by a majority of all the voting interests.
 2098 A special meeting of the voting interests to recall any member
 2099 of the board of administration may be called by 10 percent of
 2100 the unit owners giving notice of the meeting as required for a
 2101 meeting of unit owners, and the notice shall state the purpose
 2102 of the meeting. Electronic transmission may not be used as a
 2103 method of giving notice of a meeting called in whole or in part
 2104 for this purpose.

2105 1. If the recall is approved by a majority of all voting
 2106 interests by a vote at a meeting, the recall shall be effective
 2107 as provided in this paragraph. The board shall duly notice and
 2108 hold a board meeting within 5 full business days after the
 2109 adjournment of the unit owner meeting to recall one or more
 2110 board members. At the meeting, the board shall either certify
 2111 the recall, in which case such member or members shall be
 2112 recalled effective immediately and shall turn over to the board
 2113 within 5 full business days any and all records and property of
 2114 the association in their possession, or shall proceed as set
 2115 forth in subparagraph 3.

2116 2. If the proposed recall is by an agreement in writing by
 2117 a majority of all voting interests, the agreement in writing or

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2118 a copy thereof shall be served on the association by certified
 2119 mail or by personal service in the manner authorized by chapter
 2120 48 and the Florida Rules of Civil Procedure. The board of
 2121 administration shall duly notice and hold a meeting of the board
 2122 within 5 full business days after receipt of the agreement in
 2123 writing. At the meeting, the board shall either certify the
 2124 written agreement to recall members of the board, in which case
 2125 such members shall be recalled effective immediately and shall
 2126 turn over to the board, within 5 full business days, any and all
 2127 records and property of the association in their possession, or
 2128 proceed as described in subparagraph 3.

2129 3. If the board determines not to certify the written
 2130 agreement to recall members of the board, or does not certify
 2131 the recall by a vote at a meeting, the board shall, within 5
 2132 full business days after the board meeting, file with the
 2133 division a petition for binding arbitration under ~~pursuant to~~
 2134 ~~the procedures of s. 719.1255~~ or file an action with a court of
 2135 competent jurisdiction. For purposes of this paragraph, the unit
 2136 owners who voted at the meeting or who executed the agreement in
 2137 writing shall constitute one party under the petition for
 2138 arbitration or in a court action. If the arbitrator or court
 2139 certifies the recall as to any member of the board, the recall
 2140 ~~is shall be~~ effective upon the mailing of the final order of
 2141 arbitration to the association or the final order of the court.
 2142 If the association fails to comply with the order of the court
 2143 or the arbitrator, the division may take action under ~~pursuant~~
 2144 ~~to~~ s. 719.501. Any member so recalled shall deliver to the board
 2145 any and all records and property of the association in the
 2146 member's possession within 5 full business days after the

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effective date of the recall.

4. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall is ~~shall be~~ deemed effective and the board members so recalled shall immediately turn over to the board any and all records and property of the association.

5. If the board fails to duly notice and hold the required meeting or fails to file the required petition or action, the unit owner representative may file a petition under pursuant to ~~s. 719.1255~~ or file an action in a court of competent jurisdiction challenging the board's failure to act. The petition or action must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

6. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this chapter. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the

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period after a recall but before the recall election.

7. A board member who has been recalled may file a petition under pursuant to ~~s. 719.1255~~ or file an action in a court of competent jurisdiction challenging the validity of the recall. The petition or action must be filed within 60 days after the recall is deemed certified. The association and the unit owner representative shall be named as the respondents.

8. The division or court may not accept for filing a recall petition or action, whether filed under pursuant to ~~subparagraph 1., subparagraph 2., subparagraph 5., or subparagraph 7.~~ and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

(1) Alternative dispute resolution ~~Arbitration~~.—There shall be a provision for alternative dispute resolution ~~mandatory nonbinding arbitration~~ of internal disputes arising from the operation of the cooperative in accordance with s. 719.1255.

(3) GENERALLY.—The association may extinguish a discriminatory restriction as provided under s. 712.065.

Section 18. Section 719.128, Florida Statutes, is amended 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 or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), ~~event~~ for which a state of emergency

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is declared pursuant to s. 252.36 in the area encompassed by the cooperative, may exercise the following powers:

(a) Conduct board meetings, committee meetings, elections, or membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication 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, electronic transmission, public service announcements, conspicuous posting on the cooperative property, or any other means the board deems appropriate under the circumstances. Notice of decisions may also be communicated as provided in this paragraph.

(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 or an emergency plan before, during, 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 public health officials, or upon the advice of licensed

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professionals retained by or otherwise available to 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 public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board of administration, determine whether the cooperative property or any portion thereof can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the cooperative documents 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 or prohibit or restrict access to the cooperative property in the event of a public health threat. 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, injury, or contagion, 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 cooperative documents declaration or law to insure or replace those fixtures and to remove personal property

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from a unit or to sanitize the cooperative property.

(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 injury, contagion, or 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, and the sanitizing of the cooperative 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, injury, or contagion and make emergency

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repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a unit;
or

(b) The habitability of the unit or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.

Section 19. Subsection (8) of section 720.301, Florida Statutes, is amended to read:

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

(8) "Governing documents" means:

(a) The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and

(b) The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto~~+~~
~~and~~

~~(c) Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws~~

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2321 ~~and duly adopted amendments thereto.~~

2322 Section 20. Present paragraph (1) of subsection (4) of
2323 section 720.303, Florida Statutes, is redesignated as paragraph
2324 (m) and amended, a new paragraph (1) is added to that
2325 subsection, and paragraph (c) of subsection (2), paragraphs (c)
2326 and (d) of subsection (6), and paragraphs (b), (d), (g), (k),
2327 and (l) of subsection (10) are amended, to read:

2328 720.303 Association powers and duties; meetings of board;
2329 official records; budgets; financial reporting; association
2330 funds; recalls.—

2331 (2) BOARD MEETINGS.—

2332 (c) The bylaws shall provide the following for giving
2333 notice to parcel owners and members of all board meetings and,
2334 if they do not do so, shall be deemed to include the following:

2335 1. Notices of all board meetings must be posted in a
2336 conspicuous place in the community at least 48 hours in advance
2337 of a meeting, except in an emergency. In the alternative, if
2338 notice is not posted in a conspicuous place in the community,
2339 notice of each board meeting must be mailed or delivered to each
2340 member at least 7 days before the meeting, except in an
2341 emergency. Notwithstanding this general notice requirement, for
2342 communities with more than 100 members, the association bylaws
2343 may provide for a reasonable alternative to posting or mailing
2344 of notice for each board meeting, including publication of
2345 notice, provision of a schedule of board meetings, or the
2346 conspicuous posting and repeated broadcasting of the notice on a
2347 closed-circuit cable television system serving the homeowners'
2348 association. However, if broadcast notice is used in lieu of a
2349 notice posted physically in the community, the notice must be

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2350 broadcast at least four times every broadcast hour of each day
2351 that a posted notice is otherwise required. When broadcast
2352 notice is provided, the notice and agenda must be broadcast in a
2353 manner and for a sufficient continuous length of time so as to
2354 allow an average reader to observe the notice and read and
2355 comprehend the entire content of the notice and the agenda. In
2356 addition to any of the authorized means of providing notice of a
2357 meeting of the board, the association may, by rule, adopt a
2358 procedure for conspicuously posting the meeting notice and the
2359 agenda on the association's website or an application that can
2360 be downloaded on a mobile device for at least the minimum period
2361 of time for which a notice of a meeting is also required to be
2362 physically posted on the association property. Any rule adopted
2363 must, in addition to other matters, include a requirement that
2364 the association send an electronic notice to members whose e-
2365 mail addresses are included in the association's official
2366 records in the same manner as is required for a notice of a
2367 meeting of the members. Such notice must include a hyperlink to
2368 the website or such mobile application on which the meeting
2369 notice is posted. The association may provide notice by
2370 electronic transmission in a manner authorized by law for
2371 meetings of the board of directors, committee meetings requiring
2372 notice under this section, and annual and special meetings of
2373 the members to any member who has provided a facsimile number or
2374 e-mail address to the association to be used for such purposes;
2375 however, a member must consent in writing to receiving notice by
2376 electronic transmission.

2377 2. An assessment may not be levied at a board meeting
2378 unless the notice of the meeting includes a statement that

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2379 assessments will be considered and the nature of the
 2380 assessments. Written notice of any meeting at which special
 2381 assessments will be considered or at which amendments to rules
 2382 regarding parcel use will be considered must be mailed,
 2383 delivered, or electronically transmitted to the members and
 2384 parcel owners and posted conspicuously on the property or
 2385 broadcast on closed-circuit cable television not less than 14
 2386 days before the meeting.

2387 3. Directors may not vote by proxy or by secret ballot at
 2388 board meetings, except that secret ballots may be used in the
 2389 election of officers. This subsection also applies to the
 2390 meetings of any committee or other similar body, when a final
 2391 decision will be made regarding the expenditure of association
 2392 funds, and to any body vested with the power to approve or
 2393 disapprove architectural decisions with respect to a specific
 2394 parcel of residential property owned by a member of the
 2395 community.

2396 (4) OFFICIAL RECORDS.—The association shall maintain each
 2397 of the following items, when applicable, which constitute the
 2398 official records of the association:

2399 (1) Ballots, sign-in sheets, voting proxies, and all other
 2400 papers and electronic records relating to voting by parcel
 2401 owners, which must be maintained for at least 1 year after the
 2402 date of the election, vote, or meeting.

2403 (m)(1) All other written records of the association not
 2404 specifically included in this subsection ~~the foregoing~~ which are
 2405 related to the operation of the association.

2406 (6) BUDGETS.—

2407 (c)1. If the budget of the association does not provide for

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2408 reserve accounts under ~~pursuant to~~ paragraph (d), or the
 2409 declaration of covenants, articles, or bylaws do not obligate
 2410 the developer to create reserves, and the association is
 2411 responsible for the repair and maintenance of capital
 2412 improvements that may result in a special assessment if reserves
 2413 are not provided or not fully funded, each financial report for
 2414 the preceding fiscal year required by subsection (7) must
 2415 contain the following statement in conspicuous type:

2416
 2417 THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR FULLY FUNDED
 2418 RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED
 2419 MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS REGARDING
 2420 THOSE ITEMS. OWNERS MAY ELECT TO PROVIDE FOR FULLY FUNDED
 2421 RESERVE ACCOUNTS UNDER ~~PURSUANT TO~~ SECTION 720.303(6), FLORIDA
 2422 STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL
 2423 VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A
 2424 MEETING OR BY WRITTEN CONSENT.

2425 2. If the budget of the association does provide for
 2426 funding accounts for deferred expenditures, including, but not
 2427 limited to, funds for capital expenditures and deferred
 2428 maintenance, but such accounts are not created or established
 2429 under ~~pursuant to~~ paragraph (d), each financial report for the
 2430 preceding fiscal year required under subsection (7) must also
 2431 contain the following statement in conspicuous type:
 2432 THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY
 2433 DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES
 2434 AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED
 2435 IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED
 2436 TO PROVIDE FOR RESERVE ACCOUNTS UNDER ~~PURSUANT TO~~ SECTION

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720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

(d) An association is deemed to have provided for reserve accounts ~~if reserve accounts have been initially established by the developer or if the membership of the association affirmatively elects to provide for reserves. If reserve accounts are established by the developer, the budget must designate the components for which the reserve accounts may be used. If reserve accounts are not initially provided by the developer, the membership of the association may elect to do so~~ upon the affirmative approval of a majority of the total voting interests of the association. Such approval may be obtained by vote of the members at a duly called meeting of the membership or by the written consent of a majority of the total voting interests of the association. The approval action of the membership must state that reserve accounts shall be provided for in the budget and must designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors shall include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided in paragraph (f).

(10) RECALL OF DIRECTORS.—

(b)1. Board directors may be recalled by an agreement in writing or by written ballot without a membership meeting. The agreement in writing or the written ballots, or a copy thereof,

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shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure.

2. The board shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing or written ballots. At the meeting, the board shall either certify the written ballots or written agreement to recall a director or directors of the board, in which case such director or directors shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in paragraph (d).

3. When it is determined by the department pursuant to binding arbitration proceedings or the court in an action filed in a court of competent jurisdiction that an initial recall effort was defective, written recall agreements or written ballots used in the first recall effort and not found to be defective may be reused in one subsequent recall effort. However, in no event is a written agreement or written ballot valid for more than 120 days after it has been signed by the member.

4. Any rescission or revocation of a member's written recall ballot or agreement must be in writing and, in order to be effective, must be delivered to the association before the association is served with the written recall agreements or ballots.

5. The agreement in writing or ballot shall list at least as many possible replacement directors as there are directors subject to the recall, when at least a majority of the board is

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sought to be recalled; the person executing the recall instrument may vote for as many replacement candidates as there are directors subject to the recall.

(d) If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file an action with a court of competent jurisdiction or file with the department a petition for binding arbitration under ~~pursuant to~~ the applicable procedures in ss. 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For the purposes of this section, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration or in a court action. If the arbitrator or court certifies the recall as to any director or directors of the board, the recall will be effective upon the final order of the court or the mailing of the final order of arbitration to the association. The director or directors so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.

(g) If the board fails to duly notice and hold the required meeting or fails to file the required petition or action, the ~~parcel unit~~ owner representative may file a petition or a court action under ~~pursuant to~~ s. 718.1255 challenging the board's failure to act. The petition or action must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this paragraph is limited to the sufficiency of service on the board and the

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facial validity of the written agreement or ballots filed.

(k) A board member who has been recalled may file an action with a court of competent jurisdiction or a petition under ~~pursuant to~~ ss. 718.112(2)(j) and 718.1255 and the rules adopted challenging the validity of the recall. The petition or action must be filed within 60 days after the recall is deemed certified. The association and the parcel unit owner representative shall be named as respondents.

(l) The division or a court of competent jurisdiction may not accept for filing a recall petition or action, whether filed under ~~pursuant to~~ paragraph (b), paragraph (c), paragraph (g), or paragraph (k) and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

Section 21. Subsection (2) of section 720.305, Florida Statutes, is amended to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(2) ~~An~~ The association may levy reasonable fines. A fine may not exceed \$100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed

12-00203B-21

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\$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If

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the proposed fine or suspension levied by the board is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner ~~the date of the committee meeting at which the fine is approved~~. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any occupant ~~tenant~~, licensee, or invitee of the parcel owner.

Section 22. Paragraph (g) of subsection (1) and paragraph (c) of subsection (9) of section 720.306, Florida Statutes, are amended, and paragraph (h) is added to subsection (1) of that section, to read:

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

(1) QUORUM; AMENDMENTS.—

(g) A notice required under this section must be mailed or delivered to the address identified as the parcel owner's mailing address in the official records of the association as required under s. 720.303(4) ~~on the property appraiser's website for the county in which the parcel is located~~, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission.

(h)1. Except as provided herein, an amendment to a governing document, rule, or regulation enacted after July 1, 2021, which prohibits a parcel owner from renting his or her parcel, alters the authorized duration of a rental term, or specifies or limits the number of times that a parcel owner may

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rent his or her parcel during a specified period, applies only to a parcel owner who consents, individually or through a representative, to the amendment, and to parcel owners who acquire title to a parcel after the effective date of the amendment.

2. Notwithstanding subparagraph 1., an association may amend its governing documents to prohibit or regulate rental durations that are for terms of less than 6 months and to prohibit a parcel owner from renting his or parcel more than three times in a calendar year. Such amendments apply to all parcel owners.

3. This paragraph does not affect the amendment restrictions for associations of 15 or fewer parcel owners as provided in s. 720.303(1).

4. For purposes of this paragraph, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity or when beneficial ownership of the parcel does not change. For purposes of this paragraph, the term "affiliated entity" means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests. For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish the association a document certifying that this paragraph applies, as well as providing any organizational documents for the parcel owner and the affiliated entity that support the representations in the certificate, as requested by the association.

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(9) ELECTIONS AND BOARD VACANCIES.—

(c) Any election dispute between a member and an association must be submitted to ~~mandatory~~ binding arbitration with the division or filed with a court of competent jurisdiction. Such proceedings that are submitted to binding arbitration with the division must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an 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 the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

Section 23. Subsection (1) of section 720.311, Florida Statutes, is amended to read:

720.311 Dispute resolution.—

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for arbitration or the serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department under ~~pursuant to~~

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s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(j) and 718.1255 and the rules adopted by the division. In addition, the department shall conduct ~~mandatory~~ binding arbitration of election disputes between a member and an association in accordance with ~~pursuant to~~ s. 718.1255 and rules adopted by the division. ~~Neither~~ Election disputes and ~~nor~~ recall disputes are not eligible for presuit mediation; these disputes must ~~shall~~ be arbitrated by the department or filed in a court of competent jurisdiction. At the conclusion of an arbitration ~~the~~ proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least \$200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney ~~attorney's~~ fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

Section 24. Subsection (6) is added to section 720.3075, Florida Statutes, to read:

720.3075 Prohibited clauses in association documents.—

(6) An association may extinguish a discriminatory restriction as provided in s. 712.065.

Section 25. Section 720.316, Florida Statutes, is amended 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 or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), 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 meetings, committee meetings, elections, or membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication 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, electronic transmission, public service announcements, conspicuous posting on the common area ~~association property~~, or any other means the board deems appropriate under the circumstances. Notice of decisions may also be communicated as provided in this paragraph.

(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 or an emergency plan before, during, or ~~immediately~~ following the event for which a state of

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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 public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine any portion of the common areas or facilities ~~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 public health officials or upon the advice of licensed professionals retained by or otherwise available to the board, determine whether the common areas or facilities ~~association property~~ can be safely inhabited, accessed, or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Mitigate further damage, injury, or contagion, 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 common areas or facilities or sanitizing the common areas or facilities ~~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.

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(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 mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit parcel owners, tenants, guests, agents, or invitees of a parcel owner from accessing the common areas and facilities for the purposes of ingress to and egress from the parcel when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a parcel; or

(b) The habitability of the parcel or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the parcel. Any such access is subject to reasonable restrictions adopted by the association.

Section 26. This act shall take effect July 1, 2021.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 2/16/21

Bill Number (if applicable)
630

Topic Amendment # 2-18196

Amendment Barcode (if applicable)
294196

Name Mark Anderson

Job Title Lobbyist

Address 110 S Monroe

Phone 813-205-0659

City Tallahassee State FL Zip 32301

Email mark@consultanderson.com

Speaking: ☐ For ☐ Against ☐ Information ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CECOM

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 2/16/21

630

Topic Community Associations

Bill Number (if applicable) 248146

Name TEARIS MOORE

Amendment Barcode (if applicable)

Job Title _____

Address P.O. Box 2020

Phone 727.421.6902

Street

City St. Petersburg

State FL

Zip 33781

Email tearis@moore-relations.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Community Associations Institute & FirstService Residential

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 2/16/21

Bill Number (if applicable) 630

Topic SB 630

Amendment Barcode (if applicable) _____

Name Mark Anderson

Job Title Lobbyist

Address 110 S Monroe

Phone 813-205-0658

Street Tallahassee State FL Zip 32301

Email Mark@consulharder.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CEOMC

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 2/16/21

Bill Number (if applicable) 630

Topic Community Associations

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title _____

Address P.O. Box 2020

Phone (813) 727-4216

Street St. Petersburg City FL State FL Zip 33701

Email travis@moore-relations.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Community Associations Institute + FirstService

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/21
Meeting Date

630
Bill Number (if applicable)

Topic Community Assoc.

Amendment Barcode (if applicable)

Name Marco Paredes

Job Title Dir. Govt. Affairs

Address 106 E College Ave Ste. 700 Phone 850-354-7608

Street Tallahassee FL 32311 Email mparedes@seanswear.com
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing On Top of the World

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

FEB 16th 2021

Bill Number (if applicable)

SB 630

Topic

Community Ass-Prohibit Tax Police

Amendment Barcode (if applicable)

Name

David Sordani

Job Title

Mobile Home Park Association Pres. Willy

Address

Street

Lehigh University Dr
Fruitland Park FL 34731

Phone

352 885 6599

Email

sd@sordani.com
kiss@smil

City

State

Zip

Speaking:

☐ For

☐ Against

☐ Information

Waive Speaking:

☒ In Support

☐ Against

(The Chair will read this information into the record.)

Representing

Self Represented Officer of FL

Appearing at request of Chair:

☐ Yes

☐ No

Lobbyist registered with Legislature:

☐ Yes

☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

2-16-21

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

SB 630

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

215 South Monroe, Suite 508
1424 H Street SE
City State Zip

Phone

Email

Speaking:

☐ For

☐ Against

☐ Information

Waive Speaking:

☒ In Support

☐ Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

☐ Yes

☒ No

Lobbyist registered with Legislature:

☒ Yes

☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

City

State

Zip

Email

Phone

Speaking:

☒ For

☐ Against

☐ Information

Waive Speaking:

☒ In Support

☐ Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

☐ Yes

☐ No

Lobbyist registered with Legislature:

☐ Yes

☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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THE FLORIDA SENATE

Regulated Industries

2/16/21

Meeting Date

APPEARANCE RECORD

SB 630

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name Pete Dunbar

Job Title Attorney

Address 106 E. College Ave Suite 1200

Phone 850-999-4100

Street

Tallahassee

FL

32301

Email pdunbar@deanmead.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Real Property, Probate and Trust Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

Regulated Industries

2/16/21

Meeting Date

SB 630

Bill Number (if applicable)
248146

Topic Community Associations

Amendment Barcode (if applicable)

Name Pete Dunbar

Job Title Attorney

Address 106 E. College Ave Suite 1200

Phone 850-999-4100

Street

Tallahassee

FL

32301

Email pdunbar@deanmead.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Real Property, Probate and Trust Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

Datres, Susan

From: Imhof, Booter
Sent: Wednesday, February 10, 2021 3:43 PM
To: Dennis, Debbie
Cc: Babcock, Katherine; Kauffmann, Matthew; Hutson, Travis; Datres, Susan; Oyamendi, Miguel
Subject: RE: question

Thanks Debbie – this email will be sufficient.

Booter

From: Dennis, Debbie <Dennis.Debbie@flsenate.gov>
Sent: Wednesday, February 10, 2021 2:32 PM
To: Imhof, Booter <Imhof.Booter@flsenate.gov>
Subject: question

Booter,

Senator Baxley has a conflict next Tuesday with his chairing Ethics and Elections, which is being held at the same time as Regulated Industries. His committee meeting most likely will take up the whole allotted time.

He has asked Senator Hutson to present SB 630 Community Associations, which he has agreed to do. Do I need to send a letter of any kind?

*Debbie Dennis, Chief Legislative Assistant
Senator Baxley, SD 12
(850) 487-5012*



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

SENATOR DENNIS BAXLEY
12th District

February 1, 2021

The Honorable Chair Travis Hutson
416 Senate Office Building
Tallahassee, Florida 32399

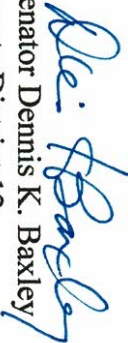
Dear Chairman Hutson,

I would like to request that SB 630 Community Association be heard in the next Regulated Industries Committee meeting.

This bill will move Florida's community associations into the 21st century by streamlining community documents, increasing transparency, and keeping costs low on Florida homeowners.

Thank you for your favorable consideration.

Onward & Upward,


Senator Dennis K. Baxley
Senate District 12

DKB/dd

cc: Booter Imhof, Staff Director

REPLY TO:

- ☐ 206 South Hwy 27/44, Lady Lake, Florida 32159 (352) 750-3133
- ☐ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-8720
- ☐ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
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: CS/SB 148

INTRODUCER: Regulated Industries Committee and Senator Bradley

SUBJECT: Beverage Law

DATE: February 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 148 allows food service establishments, i.e., restaurants, licensed under s. 561.20(1)(a)4., F.S., to sell and deliver beer, wine, and liquor for off-premises consumption under certain conditions.

Under current law, qualifying restaurants may be licensed to sell beer, wine, and liquor for consumption on the premises if they meet the following requirements. To qualify for the license, a restaurant must have at least 2,500 square feet of service area, be equipped to serve 150 persons at one time, and derive at least 51 percent of gross food and beverage revenue from the sale of food and nonalcoholic beverages. Such alcoholic beverage licensee may not make package sales of alcoholic beverages. This type of license is known as a “special restaurant license” or an “SRX license.”

Under the bill, SRX licensees may sell and deliver manufacturer-sealed containers of beer and wine for off-premises consumption. The bill also allows SRX licensees to sell and deliver any alcoholic beverage drink that is prepared and sealed by the licensee or its employee, including wine-based and liquor-based beverages, for off-premises consumption. However, it prohibits an SRX licensee from selling manufacturer-sealed containers of distilled spirits for off-premises consumption. Alcoholic beverages sold for off-premises consumption must be accompanied by the sale of food within the same order. SRX licensees must also comply with the delivery requirements for alcoholic beverage vendors in s. 561.57, F.S.

The bill requires alcoholic beverage drinks prepared and sealed by the licensee to be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and that a dated receipt of the beverage and meal must be provided and attached to the container. All containers for alcoholic beverages sold or delivered for off-premises consumption may not exceed 32 ounces.

Alcoholic beverages that are prepared and sealed by the licensee and delivered or transported by motor vehicle must be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle. A container in compliance with these requirements is not considered an open container.

The effective date of this bill is July 1, 2021.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor. The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Quota Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses may also be issued when a county initially changes its status from a county that does not permit the sale of intoxicating liquor to one that permits such sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

Special Restaurant License

The limitation on the number of quota licenses per county does not apply to a food service establishment that has at least 2,500 square feet of service area, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, during the first 60-day operating period and each 12-month

¹ Section 561.02, F.S. Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

operating period thereafter.² This type of license is known as a “special restaurant license” or an “SRX license.”³

A food service establishment holding an SRX license issued after January 1, 1958, may not operate a package store under the license and may not sell intoxicating beverages after the hours of serving or consumption of food have elapsed. Failure by a licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverages results in revocation of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.⁴

The annual fee for an SRX license varies from \$624 to \$1,820, depending upon the population of the county in which the food service establishment is located.⁵

Deliveries by Licensees

Section 561.57(1), F.S., permits an alcoholic beverages vendor to make deliveries away from its place of business for sales made at the licensed place of business. Telephone, electronic, or mail orders received at a vendor’s licensed place of business are construed as a sale actually made at the vendor’s licensed place of business.⁶

Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party, including, but not limited to, common carriers.

By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁷

Common carriers⁸ may transport alcoholic beverages.⁹ The recipient’s age and identity must be verified at the time of delivery. All deliveries by a licensee or a third-party must comply with s. 562.11, F.S., which prohibits selling, giving, serving, or permitting to be served alcoholic beverages to a person under 21 years of age.¹⁰

² The required square footage and number of persons the restaurant must be equipped to serve may be different for county or municipality jurisdiction due to special acts enacted by the Legislature that affect these requirements for the county or municipality. For a list of the special act requirements for counties and municipalities, including the applicable act in the Laws of Florida, see: www.myfloridalicense.com/dbpr/abt/documents/GENLAWS.pdf (last visited Feb. 12, 2021).

³ The division has re-designated the “SRX” license to a “SFS” license or “Special Food Service Establishment” license. However, these licenses are still commonly known as “SRX” licenses.

⁴ Section 565.02(1)(b) – (f), F.S.

⁵ Section 565.02(1)(b)-(f), F.S.

⁶ Section 561.57(1), F.S.

⁷ Section 561.57(2), F.S.

⁸ Section 561.01(19), F.S., defines a “common carrier” as “any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges.”

⁹ Section 561.57(5), F.S.

¹⁰ Section 561.57(6), F.S.

COVID-19-Related Executive Orders by the Governor

On March 9, 2020, the Governor issued Executive Order 20-52¹¹ to declare a state of emergency for the State of Florida in response to the COVID 19 pandemic.¹²

On March 17, 2020, the Governor issued Executive Order 20-68 to order all restaurants to immediately limit occupancy to 50 percent of the building's current occupancy, to comply with social distancing requirements, and to implement a health screening protocol for employees.¹³

On March 20, 2020, the Governor issued Executive Order 20-71 to suspend all sales of food for consumption on premises, and all sales of alcoholic beverages by the drink or in sealed containers for consumption on the premises. The order allowed vendors to continue to sell food and alcoholic beverages in sealed containers for off-premises consumption.¹⁴

Executive Order 20-71 also suspended the restriction in s. 561.20(2)(a)4., F.S., prohibiting an SRX restaurant licensee from making package sales of alcoholic beverages, provided the SRX licensee complied with the restrictions in Executive Order 20-68.¹⁵ The executive order required that:

- Any sale of an alcoholic beverage in a sealed container for consumption off-premises must be accompanied by the sale of food within the same order; and
- Any delivery of an alcoholic beverage must comply with s. 561.57, F.S.

Under the executive order, the suspension of the package sale restriction for SRX licenses was effective through the expiration of the state of emergency declared in Executive Order 20-52, including any extensions thereof.¹⁶

The Governor's suspension of the package sale prohibition in s. 561.20(2)(a)4., F.S., permitted SRX licensees to sell, for off-premises consumption, alcoholic beverages in sealed containers, i.e., in containers sealed by the manufacturer. The executive order did not authorize alcoholic beverage vendors to sell liquor-based or wine-based mixed drinks for consumption off-premises. As noted by the DBPR, "unless otherwise permitted by law, the sale of alcoholic beverages in sealed containers requires the containers to be sealed by the manufacturer."¹⁷

¹¹ Copies of the Governor's executive orders in response to the COVID-19 pandemic may be found at: <https://www.flgov.com/covid-19-executive-orders/> (last visited Feb 13, 2021).

¹² The Governor executive order were issued pursuant to his authority under Article IV, s. (1)(a) of the Florida Constitution and the State Emergency Management Act in s. 252.31, F.S.

¹³ Executive Order 20-68, section 3, Mar. 17, 2020.

¹⁴ Executive Order 20-71, sections 1 and 2, Mar. 20, 2020.

¹⁵ Executive Order 20-71, section 1, Mar. 20, 2020.

¹⁶ The state of emergency declared in Executive Order 20-52 has been extended by Executive Orders 20-114, 20-166, 20-192, 20-213, 20-276, and 20-316. The most recent extension, Executive Order 20-316, was signed by the Governor on December 29, 2020.

¹⁷ See DBPR, Frequently Asked Questions Related to Executive Order 20-71, updated Mar. 20, 2020, page 3, , available at: www.myfloridalicense.com/DBPR/os/documents/DBPR%20FAQs%20re%20EO%2020-71.pdf (last visited Feb. 13, 2021).

III. Effect of Proposed Changes:

The bill amends s. 561.20(1)(a)4., F.S., to allow food service establishments, i.e., restaurants, licensed under this subparagraph to sell and deliver beer, wine, and liquor for off-premises consumption under certain conditions.

The bill creates s. 561.575, F.S., to provide requirements for package sales and deliveries of alcoholic beverages by SRX licensees. Under the bill, SRX licensees may sell and deliver manufacturer-sealed containers of beer and wine for off-premises consumption. The bill also allows SRX licensees to sell and deliver any alcoholic beverage drink that is prepared and sealed by the licensee or its employee, including wine-based and liquor-based beverages, for off-premises consumption. However, it prohibits an SRX licensee from selling manufacturer-sealed containers of distilled spirits for off-premises consumption. Alcoholic beverages sold for off-premises consumption must be accompanied by the sale of food within the same order.

Under the bill, SRX license must also comply with the delivery requirements for alcoholic beverage vendors in s. 561.57, F.S.

The bill requires alcoholic beverage drinks prepared and sealed by the licensee to be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and that a dated receipt of the beverage and meal must be provided and attached to the container. Alcoholic beverages that are prepared and sealed by the licensee and delivered or transported by motor vehicle must be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle.¹⁸

Containers for alcoholic beverages sold or delivered for off-premises consumption may not exceed 32 ounces. Malt beverage containers must comply with the container size, labeling, and filling requirements of s. 563.03, F.S., except that such containers may not exceed 32 ounces.¹⁹

The bill also amends s. 316.1936(9), F.S., to provide that an alcoholic beverage that has been sealed by a licensee or employee is not an open container under the prohibition against an open container of alcoholic beverages in a motor vehicle.

The effective date of this bill is July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁸ The sealing and transportation by motor vehicle requirements in the bill are comparable to the sealing and transportation requirements in s. 564.09, F.S., for a partially consumed bottle of wine.

¹⁹ Section 563.06(7), F.S., permits a malt beverage growler to hold 32, 64, or 128 ounces of malt beverage.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

DBPR noted that the bill may enable qualifying food service establishments to increase their sales revenue through the sale of alcoholic beverages with food delivery orders.²⁰

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 561.20 of the Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries on February 17, 2021:

The committee substitute:

²⁰ 2021 Agency Legislative Bill Analysis for SB 148, Department of Business & Professional Regulation, at page 6, (Jan. 4, 2021) (on file with the Senate Committee on Regulated Industries).

- Clarifies that wine-based and liquor-based beverages prepared and sealed by the licensee may be sold or delivered for off-premises consumption.
- Limits the amount of alcoholic beverages that may be sold or delivered for off-premises consumption to 32 ounces.
- Requires alcoholic beverages prepared and sealed by the licensee to be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and that a dated receipt of the beverage and meal must be provided and attached to the container.
- Requires alcoholic beverages prepared and sealed by the licensee and transported by motor vehicle to be placed in a locked compartment, locked trunk, or other area behind the last upright seat of the motor vehicle.
- Requires malt beverage containers to comply with the size, labeling, and filling requirements of s. 563.06, F.S., except that such containers may not exceed 32 ounces.
- Requires SRX license to comply with the delivery requirements for alcoholic beverage vendors in s. 561.57, F.S.
- Prohibits the sale of manufacturer-sealed containers of distilled spirits.
- Provides that an alcoholic beverage that is sealed by a licensee or employee is not an open container under the prohibition against an open container of alcoholic beverages in a motor vehicle under s. 316.1936, F.S.

B. Amendments:

None.



690554

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2021	.	
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	.	

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

Senate Amendment (with title amendment)

Delete lines 61 - 224
and insert:
subparagraph may sell or deliver alcoholic beverages for off-
premises consumption pursuant to s. 561.575. A food service
establishment granted a special license on or after January 1,
1958, pursuant to general or special law may not operate as a
package store except as provided in s. 561.575 and may not sell
intoxicating beverages under such license after the hours of



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11 serving or consumption of food have elapsed. Failure by a
12 licensee to meet the required percentage of food and
13 nonalcoholic beverage gross revenues during the covered
14 operating period shall result in revocation of the license or
15 denial of the pending license application. A licensee whose
16 license is revoked or an applicant whose pending application is
17 denied, or any person required to qualify on the special license
18 application, is ineligible to have any interest in a subsequent
19 application for such a license for a period of 120 days after
20 the date of the final denial or revocation;

21 5. Any caterer, deriving at least 51 percent of its gross
22 food and beverage revenue from the sale of food and nonalcoholic
23 beverages at each catered event, licensed by the Division of
24 Hotels and Restaurants under chapter 509. This subparagraph does
25 not apply to a culinary education program, as defined in s.
26 381.0072(2), which is licensed as a public food service
27 establishment by the Division of Hotels and Restaurants and
28 provides catering services. Notwithstanding any law to the
29 contrary, a licensee under this subparagraph shall sell or serve
30 alcoholic beverages only for consumption on the premises of a
31 catered event at which the licensee is also providing prepared
32 food, and shall prominently display its license at any catered
33 event at which the caterer is selling or serving alcoholic
34 beverages. A licensee under this subparagraph shall purchase all
35 alcoholic beverages it sells or serves at a catered event from a
36 vendor licensed under s. 563.02(1), s. 564.02(1), or licensed
37 under s. 565.02(1) subject to the limitation imposed in
38 subsection (1), as appropriate. A licensee under this
39 subparagraph may not store any alcoholic beverages to be sold or



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served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The



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69 Division of Alcoholic Beverages and Tobacco is hereby authorized
70 to adopt rules to administer the license created in this
71 subparagraph, to include rules governing licensure,
72 recordkeeping, and enforcement. The first \$300,000 in fees
73 collected by the division each fiscal year pursuant to this
74 subparagraph shall be deposited in the Department of Children
75 and Families' Operations and Maintenance Trust Fund to be used
76 only for alcohol and drug abuse education, treatment, and
77 prevention programs. The remainder of the fees collected shall
78 be deposited into the Hotel and Restaurant Trust Fund created
79 pursuant to s. 509.072; or

80 6. A culinary education program as defined in s.
81 381.0072(2) which is licensed as a public food service
82 establishment by the Division of Hotels and Restaurants.

83 a. This special license shall allow the sale and
84 consumption of alcoholic beverages on the licensed premises of
85 the culinary education program. The culinary education program
86 shall specify designated areas in the facility where the
87 alcoholic beverages may be consumed at the time of application.
88 Alcoholic beverages sold for consumption on the premises may be
89 consumed only in areas designated pursuant to s. 561.01(11) and
90 may not be removed from the designated area. Such license shall
91 be applicable only in and for designated areas used by the
92 culinary education program.

93 b. If the culinary education program provides catering
94 services, this special license shall also allow the sale and
95 consumption of alcoholic beverages on the premises of a catered
96 event at which the licensee is also providing prepared food. A
97 culinary education program that provides catering services is



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not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not



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127 permit the licensee to sell alcoholic beverages by the package
128 for off-premises consumption.

129
130 However, any license heretofore issued to any such hotel, motel,
131 motor court, or restaurant or hereafter issued to any such
132 hotel, motel, or motor court, including a condominium
133 accommodation, under the general law shall not be moved to a new
134 location, such license being valid only on the premises of such
135 hotel, motel, motor court, or restaurant. Licenses issued to
136 hotels, motels, motor courts, or restaurants under the general
137 law and held by such hotels, motels, motor courts, or
138 restaurants on May 24, 1947, shall be counted in the quota
139 limitation contained in subsection (1). Any license issued for
140 any hotel, motel, or motor court under this law shall be issued
141 only to the owner of the hotel, motel, or motor court or, in the
142 event the hotel, motel, or motor court is leased, to the lessee
143 of the hotel, motel, or motor court; and the license shall
144 remain in the name of the owner or lessee so long as the license
145 is in existence. Any special license now in existence heretofore
146 issued under this law cannot be renewed except in the name of
147 the owner of the hotel, motel, motor court, or restaurant or, in
148 the event the hotel, motel, motor court, or restaurant is
149 leased, in the name of the lessee of the hotel, motel, motor
150 court, or restaurant in which the license is located and must
151 remain in the name of the owner or lessee so long as the license
152 is in existence. Any license issued under this section shall be
153 marked "Special," and nothing herein provided shall limit,
154 restrict, or prevent the issuance of a special license for any
155 restaurant or motel which shall hereafter meet the requirements



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of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 2. Section 561.575, Florida Statutes, is created to read:

561.575 Food service establishments; off-premises consumption of alcoholic beverages.—

(1) Notwithstanding any other law, a public food service establishment licensed under s. 561.20(2)(a)4. may sell manufacturer-sealed containers of wine, containers of malt beverages, or any alcoholic beverage drink prepared by the vendor, including any wine-based and liquor-based drinks, sold in containers sealed by the licensee or its employees for consumption off of the licensed premises if accompanied by the sale of food within the same order. The container for any alcoholic beverage sold or delivered for consumption off the premises pursuant to this section may not exceed 32 ounces. An alcoholic beverage drink prepared by the vendor and sold or delivered for consumption off the premises must be securely sealed by the licensee or its employees with an unbroken seal that prevents the beverage from being immediately consumed before removal from the premises. Such alcoholic beverage also



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185 must be placed in a bag or other container that is secured in
186 such a manner that it is visibly apparent if the container has
187 been subsequently opened or tampered with, and a dated receipt
188 for the alcoholic beverage and meal must be provided by the
189 licensee and attached to the sealed container. If transported in
190 a motor vehicle, an alcoholic beverage that is not in a
191 container sealed by the manufacturer must be placed in a locked
192 glove compartment, a locked trunk, or the area behind the last
193 upright seat of a motor vehicle that is not equipped with a
194 trunk.

195 (2) Any sale or delivery of a malt beverage under this
196 section must comply with the container size, labeling, and
197 filling requirements under s. 563.06, except that such container
198 may not exceed 32 ounces.

199 (3) Any delivery of an alcoholic beverage under this
200 section must comply with s. 561.57.

201 (4) This section may not be construed to authorize public
202 food service establishments licensed under s. 561.20(2)(a)4. to
203 sell as package manufacturer-sealed containers of distilled
204 spirits.

205 Section 3. Subsection (9) of section 316.1936, Florida
206 Statutes, is amended to read:

207 316.1936 Possession of open containers of alcoholic
208 beverages in vehicles prohibited; penalties.—

209 (9) A bottle of wine that has been resealed and is
210 transported pursuant to s. 564.09 or an alcoholic beverage that
211 has been sealed by a licensee or the employee of a licensee and
212 is transported pursuant to s. 561.575 is not an open container
213 ~~under the provisions of this section.~~



690554

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

And the title is amended as follows:

Delete lines 4 - 6

and insert:

establishments to sell or deliver certain alcoholic
beverages for off-premises consumption under certain
circumstances; creating s. 561.575, F.S.; providing
requirements for such establishments to sell alcoholic
beverages for off-premises consumption; requiring that
such alcoholic beverages be transported in a specified
manner; providing construction; amending s. 316.1936,
F.S.; specifying that certain alcoholic beverages sold
by such establishments are not open containers for the
purposes of the prohibition on possessing open
containers of alcoholic beverages in vehicles;
providing an effective date.



714630

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2021	.	
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The Committee on Regulated Industries (Bradley) recommended the following:

Senate Amendment to Amendment (690554)

Delete lines 192 - 194
and insert:
compartment, a locked trunk, or the area behind the last upright
seat of a motor vehicle.

By Senator Bradley

5-00453-21

2021148__

A bill to be entitled

An act relating to the Beverage Law; amending s. 561.20, F.S.; authorizing certain food service establishments to sell or deliver alcoholic beverages for off-premises consumption if specified requirements are met; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(21), with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(21), in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business

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

5-00453-21

2021148__

Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic

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

5-00453-21

2021148

59 beverages during the first 60-day operating period and each 12-
 60 month operating period thereafter. A licensee under this
 61 subparagraph may sell or deliver alcoholic beverages by the
 62 package for off-premises consumption if the alcoholic beverage
 63 is in a sealed container and is accompanied by the sale of food
 64 within the same order. Any delivery of an alcoholic beverage
 65 under this subparagraph must comply with s. 561.57. A food
 66 service establishment granted a special license on or after
 67 January 1, 1958, pursuant to general or special law may not
 68 ~~operate as a package store and may not~~ sell intoxicating
 69 beverages under such license after the hours of serving or
 70 consumption of food have elapsed. Failure by a licensee to meet
 71 the required percentage of food and nonalcoholic beverage gross
 72 revenues during the covered operating period shall result in
 73 revocation of the license or denial of the pending license
 74 application. A licensee whose license is revoked or an applicant
 75 whose pending application is denied, or any person required to
 76 qualify on the special license application, is ineligible to
 77 have any interest in a subsequent application for such a license
 78 for a period of 120 days after the date of the final denial or
 79 revocation;

80 5. Any caterer, deriving at least 51 percent of its gross
 81 food and beverage revenue from the sale of food and nonalcoholic
 82 beverages at each catered event, licensed by the Division of
 83 Hotels and Restaurants under chapter 509. This subparagraph does
 84 not apply to a culinary education program, as defined in s.
 85 381.0072(2), which is licensed as a public food service
 86 establishment by the Division of Hotels and Restaurants and
 87 provides catering services. Notwithstanding any law to the

5-00453-21

2021148

88 contrary, a licensee under this subparagraph shall sell or serve
 89 alcoholic beverages only for consumption on the premises of a
 90 catered event at which the licensee is also providing prepared
 91 food, and shall prominently display its license at any catered
 92 event at which the caterer is selling or serving alcoholic
 93 beverages. A licensee under this subparagraph shall purchase all
 94 alcoholic beverages it sells or serves at a catered event from a
 95 vendor licensed under s. 563.02(1), s. 564.02(1), or licensed
 96 under s. 565.02(1) subject to the limitation imposed in
 97 subsection (1), as appropriate. A licensee under this
 98 subparagraph may not store any alcoholic beverages to be sold or
 99 served at a catered event. Any alcoholic beverages purchased by
 100 a licensee under this subparagraph for a catered event that are
 101 not used at that event must remain with the customer; provided
 102 that if the vendor accepts unopened alcoholic beverages, the
 103 licensee may return such alcoholic beverages to the vendor for a
 104 credit or reimbursement. Regardless of the county or counties in
 105 which the licensee operates, a licensee under this subparagraph
 106 shall pay the annual state license tax set forth in s.
 107 565.02(1)(b). A licensee under this subparagraph must maintain
 108 for a period of 3 years all records and receipts for each
 109 catered event, including all contracts, customers' names, event
 110 locations, event dates, food purchases and sales, alcoholic
 111 beverage purchases and sales, nonalcoholic beverage purchases
 112 and sales, and any other records required by the department by
 113 rule to demonstrate compliance with the requirements of this
 114 subparagraph. Notwithstanding any law to the contrary, any
 115 vendor licensed under s. 565.02(1) subject to the limitation
 116 imposed in subsection (1), may, without any additional licensure

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under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first \$300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the

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

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alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms

Page 6 of 8

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of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license

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is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 2. This act shall take effect July 1, 2021.



2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION

BILL NUMBER:	SB 148
BILL TITLE:	Beverage Law
BILL SPONSOR:	Sen. Bradley
EFFECTIVE DATE:	07/01/2021

COMMITTEES OF REFERENCE

1) Regulated Industries
2) Commerce and Tourism
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

N/A

SIMILAR BILLS

BILL NUMBER:	SB 134 (Compare)
SPONSOR:	Sen. Brandes

PREVIOUS LEGISLATION

BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS

BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	January 4, 2021
LEAD AGENCY ANALYST:	Sterling Whisenhunt, Director Alcoholic Beverages and Tobacco
ADDITIONAL ANALYST(S):	Debi Winters, Alcoholic Beverages and Tobacco Tracy Dixon, Service Operations Tom Coker, Technology Jake Whealdon, Acting OGC Rules Megan Kachur, OGC - ABT

LEGAL ANALYST:	Ross Marshman, OGC
FISCAL ANALYST:	Raleigh Close, Administration

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill authorizes food service establishments that have a special alcoholic beverage license to sell or deliver alcoholic beverages by the package for off-premises consumption if the alcoholic beverage is in a sealed container and is accompanied by the sale of food within the same order.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:**

Currently, s. 561.20, F.S., authorizes the Division of Alcoholic Beverages and Tobacco (divisions) to issue a special alcoholic beverage license to a food service establishments that have 2,500 square feet of service area, are equipped to serve meals to 150 persons at one time, and derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not currently operate as a package store and may not sell intoxicating beverages under this license after the hours of serving or consumption of food have elapsed.

Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period must result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation.

2. **EFFECT OF THE BILL:**

The bill authorizes food service establishments that have a special alcoholic beverage license pursuant the criteria above to sell or deliver alcoholic beverages by the package for off-premises consumption if the alcoholic beverage is in a sealed container and is accompanied by the sale of food within the same order. Consistent with current law relating to deliveries by vendors, the bill requires any delivery of an alcoholic beverage to comply with the following:

- Deliveries made away from his or her place of business must be made in vehicles that are owned or leased by the food service establishment or in a third-party vehicle pursuant to a contract with a third party with whom the food service establishment has contracted to make deliveries, including, but not limited to, common carriers.
- By acceptance of an alcoholic beverage license, the food service establishment agrees that vehicles that are owned or leased by the food service establishment must always be subject to inspection and search without a search warrant for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages; and
- Valid proof of the recipient's identity and age must be verified and documented at the time of delivery.

The bill deletes the prohibition for food service establishments with a special alcoholic beverage license from operating as a package store. However, the bill retains the prohibition on selling intoxicating beverages under this license after the hours of serving or consumption of food has elapsed.

3. **DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?** Y ☐ N ☒

If yes, explain:	No
Is the change consistent with the agency's core mission?	Y ☐ N ☐

Rule(s) impacted (provide references to F.A.C., etc.):	None anticipated.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	To date, the division has not been contacted by proponents of the bill with any stated positions.
Opponents and summary of position:	To date, the division has not been contacted by opponents of the bill with any stated positions.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y ☐ N ☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?Y ☐ N ☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?**Y ☐ N ☒

Revenues:	None anticipated.
Expenditures:	None anticipated
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?Y ☐ N ☒

Revenues:	None anticipated.
Expenditures:	None anticipated.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y ☒ N ☐

Revenues:	The bill may enable food service establishments to increase their sales revenue through the sale of alcoholic beverages with food delivery orders.
Expenditures:	None anticipated.
Other:	None anticipated.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☒

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	None anticipated.

ADDITIONAL COMMENTS

ABT Impact:

Enforcement – will need to update documentation/forms related to SFS licenses. Additionally, the bill requires alcoholic beverages and drinks to be sealed prior to delivery/transport; however, “sealed” is not defined.

Licensing – will need to update our reference material (License Type Chart) and some webpage information that pertains to applying for a SFS license.

Tax Collection – none.

Division of Service Operations: No Impact.

OGC Rules: No additional comments.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	The word “sealed” is referenced throughout the Beverage Law, but is not defined. For example, s. 563.09(3), F.S., references sealed containers, for malt beverage tastings, and specifies each serving must be provided in a cup, glass, or other open container and may not be provided by the package in an unopened can or bottle or in any “other sealed container” while s. 565.03(2)(c) and (2)(c)1., F.S., allows a craft distillery to sell branded products in “factory-sealed” containers that are filled at the distillery for off-premises consumption. The division refers to s. 563.06(7)(b), F.S., that specifies, “The container must have an unbroken seal or be incapable of being immediately consumed.”

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**THE FLORIDA SENATE
APPEARANCE RECORD**

02/16/2021

Meeting Date

SB 148

Bill Number (if applicable)

690554

Amendment Barcode (if applicable)

Topic Beverage Law

Name Jonathan Rees

Job Title Director, State Government Affairs

Address 204 S. Monroe St.

Phone 8505700043

Street Tallahassee

FL

32301

Email jonathan.rees@anheuser-busch.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Anheuser-Busch

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/21
Meeting/Date

SB 148
Bill Number (if applicable)

690554
Amendment Barcode (if applicable)

Topic Bellmange Law

Name Andrew Ketchel

Job Title Consultant

Address 124 W. Jefferson Street Phone 222-9075

Street City State Zip Email
124 W. Jefferson Street FL 32301 Andrew@ccfla.com

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Distilled Spirits Council of the US

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

City

State

Zip

Email

Phone

Speaking:

☐ For

☐ Against

☐ Information

Waive Speaking:

☒ In Support

☐ Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

☐ Yes

☒ No

Lobbyist registered with Legislature:

☐ Yes

☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

February 16, 2021

Meeting Date

148

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 230 South Adams Street

Phone 224-2250

Street

Tallahassee

FL

32311

Email spadgett@fria.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Restaurant and Lodging Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

February 16, 2021

Meeting Date

148

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Eli Nortelus

Job Title Lobbyist

Address 210 South Monroe Street

Phone 850-459-6506

Street

Tallahassee

Florida

32301

Email eli@@norrob.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Independent Spirits Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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**THE FLORIDA SENATE
APPEARANCE RECORD**

February 16, 2021

Meeting Date

148

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Eli Nortelus

Job Title Lobbyist

Address 210 South Monroe Street

Phone 850-459-6506

Street

Tallahassee

Florida

32301

Email eli@@@norrob.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Independent Spirits Association

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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2/16/21

Meeting Date

**THE FLORIDA SENATE
APPEARANCE RECORD**

SB 148

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St

Phone 850-681-0024

Street

Tallahassee

FL

32301

Email jorge@flapartners.com

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing Uber Technologies

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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2/16/21

Meeting Date

**THE FLORIDA SENATE
APPEARANCE RECORD**

SB148

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St

Phone 850-681-0024

Street

Tallahassee

FL

32301

Email jorge@flapartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

February 16, 2021

148

Meeting Date

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Scott Dick

Job Title Lobbyist

Address 210 South Monroe Street

Phone 850-421-9100

Street

Tallahassee

Florida

32301

Email scott@skdgrp.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ABC Fine Wine and Liquor

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

2/16

Meeting Date

148

*Bill Number (if applicable)*Topic Beverage Law*Amendment Barcode (if applicable)*Name Greg BlackJob Title LobbyistAddress 1727 Highland PlacePhone 850-509-8022*Street*TallahasseeFL32308Email greg@waypointstrat.com*City**State**Zip*Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing R Street InstituteAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

2/16/21

Meeting Date

148

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 16 Feb 2021

Bill Number (if applicable) SB 148

Topic Beverage Law - Regulated Industries Amendment Barcode (if applicable) _____

Name Diego Echuerri

Job Title Legislative Liaison

Address 200 W College Ave Phone _____

Street TLH City FL State FL Zip _____ Email dechuerri@aflphg.org

Speaking: ☐ For ☐ Against ☐ Information ☒ Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

02/16/2021

APPEARANCE RECORD

SB 148

Meeting Date

Bill Number (if applicable)

Topic Beverage Law

Amendment Barcode (if applicable)

Name Jake Farmer

Job Title Director of Government Affairs

Address 227 South Adams St.

Phone (850) 222-4082

Street

Tallahassee

Florida

32301

Email Jake@ftf.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

Datres, Susan

From: Imhof, Booter
Sent: Wednesday, February 10, 2021 3:43 PM
To: Dennis, Debbie
Cc: Babcock, Katherine; Kauffmann, Matthew; Hutson, Travis; Datres, Susan; Oyamendi, Miguel
Subject: RE: question

Thanks Debbie – this email will be sufficient.

Booter

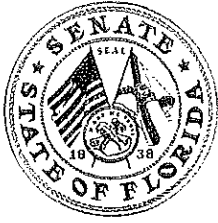
From: Dennis, Debbie <Dennis.Debbie@flsenate.gov>
Sent: Wednesday, February 10, 2021 2:32 PM
To: Imhof, Booter <Imhof.Booter@flsenate.gov>
Subject: question

Booter,

Senator Baxley has a conflict next Tuesday with his chairing Ethics and Elections, which is being held at the same time as Regulated Industries. His committee meeting most likely will take up the whole allotted time.

He has asked Senator Hutson to present SB 630 Community Associations, which he has agreed to do. Do I need to send a letter of any kind?

*Debbie Dennis, Chief Legislative Assistant
Senator Baxley, SD 12
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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

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Preparedness and Response

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Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

January 26, 2021

Senator Travis Hutson, Chairman
Senate Committee on Regulated Industries
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 148 be placed on the agenda of the Regulated Industries committee at your earliest convenience. The bill would allow restaurants to sell alcoholic beverages "to go" as was provided in Governor DeSantis' executive order last March.

Thank you for your consideration and please let me know if I can be of any assistance.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Bradley".

Jennifer Bradley

cc: Booter Imhof
Susan Datres

REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
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: CS/SB 522

INTRODUCER: Regulated Industries Committee and Senator Diaz

SUBJECT: Vacation Rentals

DATE: February 18, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 522 preempts all regulation of vacation rentals to the state, including the inspection and licensing of vacation rentals. A vacation rental is a unit in a condominium or cooperative, or a single, two, three, or four family house that is rented to guests more than three times a year for periods of less than 30 days or one calendar month, whichever is shorter, or held out as regularly rented to guests. Vacation rentals are licensed by the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR).

The bill adds “licensing” to the list of regulations of public lodging establishments and public food service establishments that are now expressly preempted to the state. It provides that a local law, ordinance, or regulation may not require local inspection or licensing of the public lodging or public food service establishments.

Under the bill, a local government may regulate activities that arise when a property is used as a vacation rental, provided the regulation applies uniformly to all residential properties. The bill maintains current law that local governments may not prohibit vacation rentals or regulate the duration or frequency of vacation rentals. The bill maintains the current “grandfathered” status for local laws, ordinances, or regulations adopted on or before June 1, 2011, and provides that a local government may amend a grandfathered regulation to be less restrictive.

The bill revises the “grandfathered” status for local laws, ordinances, or regulations for a jurisdiction within an area of critical state concern designation. Under the bill, jurisdictions in an

area of critical state concern could continue to regulate and inspect vacation rentals, prohibit vacation rentals, or regulate the duration or frequency of rental of vacation rentals, if the laws, ordinances, or regulations were adopted before June 1, 2011.

The bill also preempts the regulation of advertising platforms to the state. An advertising platform is a person who electronically advertises a vacation rental to rent for transient occupancy, maintains a marketplace, and a reservation or payment system.

The bill requires the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to include the property's vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers on the vacation rental's advertisement, and attest that, to the best of their knowledge, those numbers are current, valid, and accurate. The vacation rental property owner or operator must display this tax and licensure information inside the vacation rental property.

The bill requires an advertising platform to display the vacation rental license number and the Florida sales tax registration and tourist development tax account numbers of each property that advertises on its platform. The advertising platform must verify the validity of the vacation rental's license number before it publishes the advertisement and must perform ongoing checks every calendar quarter thereafter. To facilitate this verification, the division must maintain vacation rental license information in a readily accessible electronic format. The advertising platform must remove from public view any advertisement or listing that fails to display a valid vacation rental license number.

Under the bill, advertising platforms must provide to the division on a quarterly basis information that assists the division with identification and verification of the vacation rental property's compliance with the bill's requirements.

Advertising platforms are required by the bill to collect and remit any taxes imposed under chs. 125, 205, and 212, F.S., that result from payment for the rental of a vacation rental property on its platform. The bill allows platforms to exclude service fees from the taxable basis if the platforms do not own, operate, or manage the vacation rental. It allows the division to take enforcement action for noncompliance.

Additionally, the bill:

- Requires advertising platforms to adopt anti-discrimination policies and to inform users of the public lodging discrimination prohibition found in s. 509.092, F.S.;
- Allows DOR to adopt emergency rules for six month which may be renewed until permanent rules are adopted; and
- Provides that its terms do not supersede any current or future declaration or covenant for condominium, cooperative, or homeowners' associations.

The bill takes effect upon becoming law. However, the provisions relating to the regulation of advertising platforms take effect January 1, 2022.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is the state agency charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The term “public lodging establishments” includes transient and nontransient public lodging establishments.¹ The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A “transient public lodging establishment” is defined in s. 509.013(4)(a)1., F.S., as:

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.

A “nontransient public lodging establishment” is defined in s. 509.013(4)(a)2., F.S., as:

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.

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of “public lodging establishment”:

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 Families or other similar place regulated under s. 381.0072, F.S.;
3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;
4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or one 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 one 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, F.S.;
6. Any establishment inspected by the Department of Health and regulated by ch. 513 F.S.;

¹ Section 509.013(4)(a), F.S.

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; and
9. Any roominghouse, boardinghouse, or other living or 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, F.S.

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.²

A "vacation rental" is defined in s. 509.242(1)(c), F.S., as:

any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but is not a timeshare project.

The DBPR licenses vacation rentals as condominiums, dwellings, or timeshare projects.³ The division may issue a vacation rental license for "a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less units collectively."⁴ The division does not license or regulate the rental of individual rooms within a dwelling unit based on the roominghouse and boardinghouse exclusion from the definition of public lodging establishment in s. 509.013(4)(b)9., F.S.⁵

The 48,226 public lodging establishments licensed by the division are distributed as follows:⁶

- Hotels – 2,191 licenses;
- Motels – 2,497 licenses;
- Nontransient apartments – 18,571 licenses;
- Transient apartments – 942 licenses;
- Bed and Breakfast Inns – 269 licenses;
- Vacation rental condominiums – 9,031 licenses;

² Section 509.242(1), F.S.

³ Fla. Admin. Code R. 61C-1.002(4)(a)1.

⁴ The division further classifies a vacation rental license as a single, group, or collective license. See Rule 61C-1.002(4)(a)1, F.A.C. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses or units per license.

⁵ Department of Business and Professional Regulation, *2021 Agency Legislative Bill Analysis for SB 522*, at page 2 (Feb. 8, 2021) (on file with the Senate Committee on Regulated Industries).

⁶ Department of Business and Professional Regulation, *HR400A-Sum Public Food and Lodging Statewide Account Summary*, (Oct. 1, 2020) available at <http://www.myfloridalicense.com/dbpr/hr/reports/statistics/documents/licensecount1.pdf> (last visited Feb. 5, 2021).

- Vacation rental dwellings – 17,934 licenses; and
- Vacation rental timeshare projects – 27 licenses.

Inspections of Vacation Rentals

The division must inspect each licensed public lodging establishment at least biannually, but must inspect transient and nontransient apartments at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a request to the division.⁷ The division conducts inspections of vacation rentals in response to a consumer complaint. In Fiscal Year 2019-2020, the division received 1,391 consumer complaints regarding vacation rentals. In response to the complaints, the division's inspection confirmed a violation for 38 of the complaints.⁸

The division's inspection of vacation rentals includes matters of safety (for example, fire hazards, smoke detectors, and boiler safety), sanitation (for example, safe water sources, bedding, and vermin control), consumer protection (for example, unethical business practices, compliance with the Florida Clean Air Act, and maintenance of a guest register), and other general safety and regulatory matters.⁹ The division must notify the local firesafety authority or the State Fire Marshal of any readily observable violation of a rule adopted under ch. 633, F.S.,¹⁰ which relates to a public lodging establishment.¹¹

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways, from a person competent to conduct such inspections.¹²

Preemption

Section 509.032(7)(a), F.S., provides that “the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state.”

⁷ Section 509.032(2)(a), F.S.

⁸ Department of Business and Professional Regulation, *Division of Hotels and Restaurants Annual Report for FY 2019-2020* at page 21, available at http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2019_20.pdf (last visited Feb. 5, 2021).

⁹ See ss. 509.211 and 509.221, F.S., for the safety and sanitary regulations, respectively. See also Rule 61C-1.002, F.A.C.; *Lodging Inspection Report, DBPR Form HR 5022-014*, which details the safety and sanitation matters addressed in the course of an inspection. A copy of the Lodging Inspection Report is available at: <https://www.flrules.org/Gateway/reference.asp?No=Ref-07062> (last visited Feb. 5, 2021).

¹⁰ Chapter 633, F.S., relates to fire prevention and control, including the duties of the State Fire Marshal and the adoption of the Florida Fire Prevention Code.

¹¹ Section 509.032(2)(d), F.S.

¹² See ss. 509.211(3) and 509.2112, F.S., and form *DBPR HR-7020, Division of Hotels and Restaurants Certificate of Balcony Inspection*, available at http://www.myfloridalicense.com/dbpr/hr/forms/documents/application_packet_for_vacation_rental_license.pdf (last visited Feb. 5, 2021).

Current law does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206, F.S.¹³

Section 509.032(7)(b), F.S., prohibits local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

Section 509.032(7)(c), F.S., provides that the prohibition in s. 509.032(7)(b), F.S., does not apply to local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for vacation rental if the law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.¹⁴

Legislative History

In 2011, the Legislature preempted certain vacation rental regulation to the state. The preemption prevented local governments from enacting any law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.¹⁵

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.¹⁶

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.¹⁷ Chapter 2014-71, Laws of Fla., amended s. 509.032(7)(b), F.S., and repealed the portions of the preemption of local laws, ordinances, and regulations which prohibited “restrict[ing] the use of vacation rentals” and which prohibited regulating vacation rentals “based solely on their classification, use or occupancy.”¹⁸

Attorney General Opinions

The office of the Attorney General issued an Informal Legal Opinion on October 22, 2013, regarding whether Flagler County could intercede and stop vacation rental operations in private homes that were zoned, prior to June 1, 2011, for single-family residential use.¹⁹ According to the opinion, “due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood.” Flagler County had no regulation governing vacation rentals before the

¹³ Section 509.032(7)(a), F.S.

¹⁴ See s. 163.3164(43), F.S., which provides that the state land planning agency is the Department of Economic Opportunity.

¹⁵ Chapter 2011-119, Laws of Fla.

¹⁶ *Id.*

¹⁷ Chapter 2014-71, Laws of Fla. (codified in s. 509.032(7)(b), F.S.)

¹⁸ *Id.*

¹⁹ Florida Attorney General, *Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding Vacation Rental Operation-Local Ordinances*, Oct. 22, 2013, (on file with the Senate Committee on Regulated Industries).

grandfather date of June 1, 2011, in s. 509.032(7)(b), F.S. The Attorney General concluded that the county's local zoning ordinance for single-family homes that predated June 1, 2011, did not restrict the rental of such property as a vacation rental and that the zoning ordinances could not now be interpreted to restrict vacation rentals.

The Attorney General also issued an opinion on November 13, 2014, to the City of Wilton Manors, concluding that s. 509.032(7)(b), F.S., does not permit the city to regulate the location of vacation rentals through zoning, and the city may not prohibit vacation rentals that fail to comply with the registration and licensing requirements in s. 509.241, F.S., which requires public lodging establishments to obtain a license from the division.²⁰

In addition, the Attorney General issued an advisory opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance regarding vacation rentals.²¹ The Attorney General concluded that the preemption in s. 509.032, F.S., allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the Attorney General noted that a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.²²

The Attorney General also opined that amending an ordinance that was enacted prior to June 1, 2011 will not invalidate the grandfather protection for the parts of the ordinance that are reenacted.²³ The new provisions would be preempted by state law if they revise an ordinance in a manner that would regulate the duration or frequency of rental of vacation rentals, even when the new regulation would be considered “less restrictive” than the prior local law.

Public Lodging Non-Discrimination Law

Section 509.092, F.S., prohibits an operator of a public lodging establishment from denying service or offering lesser quality accommodations to a person based upon his or her race, creed, color, sex, pregnancy, physical disability, or national origin. An aggrieved person may file a complaint pursuant to s. 760.11, F.S., of the Florida Civil Rights Act. Such complaints are mediated, investigated, and determined by the Florida Commission on Human Relations.²⁴

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of one or more specified sex offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.²⁵ The

²⁰ Op. Att’y Gen. Fla. 2014-09, *Vacation Rentals - Municipalities - Land Use* (November 13, 2014), available at <http://www.myfloridalegal.com/ago.nsf/printview/5DFB7F27FB483C4685257D900050D65E> (last visited Feb. 7, 2021).

²¹ Op. Att’y Gen. Fla. 2016-12, *Municipalities - Vacation Rentals – Zoning*, Oct. 5, 2016 (on file with the Senate Committee on Regulated Industries).

²² *Id.*

²³ Op. Att’y Gen. Fla. 2019-07, *Vacation rentals, municipalities, grandfather provisions* (August 16, 2019) available at <http://www.myfloridalegal.com/ago.nsf/Opinions/933B3706FADB00CA85258458006F4CFA> (last visited Feb. 17, 2021).

²⁴ See Florida Commission on Human Relations, *Public Accommodations*, <https://fchr.myflorida.com/public-accommodations> (last visited Feb. 7, 2021).

²⁵ Sections 775.21 and 943.0435, F.S.

registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. Generally, the sexual predator or offender must register with the sheriff 48 hours after being released from prison or otherwise establishing residence in Florida. The laws span several different chapters and numerous statutes²⁶ and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections, the Department of Juvenile Justice, the Department of Highway Safety and Motor Vehicles, and the Department of Children and Families.

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;²⁷
- Has been convicted of a qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.²⁸

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification requirements in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the juvenile was 14 years of age or older.²⁹

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.³⁰ Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under the DOC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

²⁶ Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

²⁷ Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

²⁸ Sections 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

²⁹ Sections 943.0435(1)(h), 985.4815(1)(h), 944.606(1)(f), and 944.607(1)(f), F.S., address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

³⁰ All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register under s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (in the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). *See* ss. 775.21(8)(a), 943.0435(14)(b), 944.607(13)(a), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times per year (in the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). Section 943.0435(14)(a), F.S.

Sexual predators and sexual offenders are required to report at registration and reregistration certain information, including but not limited to, physical characteristics, relevant sex offense history, and information on residence, vehicles/vessels owned, and travel.

A sexual predator or offender must register at the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence.³¹

The FDLE, through its agency website, provides a searchable database that includes some of this information.³² Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

Residence Definitions

Section 775.21, F.S., defines the terms “permanent residence,” “temporary residence,” and “transient residence” for the purpose of reporting residence information. Section 943.0435, F.S., also uses these definitions.³³

“Permanent residence” means a place where the person abides, lodges, or resides for three or more consecutive days.³⁴

“Temporary residence” means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of three or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.³⁵

“Transient residence” means a county where a person lives, remains, or is located for a period of three or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.³⁶

³¹ Sections 775.21(6)(e)1.a. and 943.0435(2)(a)1., F.S., providing registration requirements for sexual predators and offenders, respectively.

³² The FDLE is the central repository for registration information, and also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. See <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Jan. 26, 2021).

³³ Sections 775.21(2)(k), (n), and (o) and 943.0435(1)(f), F.S.

³⁴ Section 775.21(2)(k), F.S.

³⁵ Section 775.21(2)(n), F.S.

³⁶ Section 775.21(2)(o), F.S.

III. Effect of Proposed Changes:

Preemptions

The bill amends s. 509.032(7), F.S., to preempt all regulation of vacation rentals and advertising platforms to the state, and specifically prohibits local laws, ordinances, or regulations that require the inspection or licensure of public lodging establishments, including vacation rentals.

The bill allows a local government to regulate activities that arise when a property is used as a vacation rental if the regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental or as a long-term rental under ch. 83, F.S. However, a local government may not prohibit vacation rentals or regulate the duration or frequency of rentals. Any local law, ordinance, or regulation adopted on or before June 1, 2011, is not affected by this preemption, and any such regulation may be amended without affecting its grandfathered status if the amendment makes the local law, ordinance, or regulation less restrictive with regard to its prohibition of, or duration or frequency regulation of, vacation rentals.

Local governments in areas of critical state concern may regulate activities that arise in vacation rentals, including licensing, regulating the duration or frequency of rentals and prohibiting rentals if the local law, ordinance, or regulations was adopted before June 1, 2011, otherwise these jurisdictions would be subject to the restrictions noted above. A law, ordinance, or regulation adopted before June 1, 2011 may also be amended to be less restrictive.

Definition of “Advertising Platform”

The bill creates s. 509.013(17), F.S., to define the term “advertising platform.” Under the bill, an advertising platform:

- Provides an online application, software, website, or system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;
- Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and
- Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

Requirements for Operators of Vacation Rentals

The bill amends s. 509.241, F.S., to require the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers within the vacation rental property.

Requirements for Advertising Platforms

Effective January 1, 2022, the bill creates s. 509.243, F.S., to provide requirements, including a quarterly reporting, and tax collection and remittance requirements, for an advertising platform.

Advertising and Reporting Requirements

Under the bill, an advertising platform must:

- Require that a person who places an advertisement for the rental of a vacation rental to:
 - Include the vacation rental license number and the applicable Florida sales tax registration, and merchant business tax receipt or tourist development tax account numbers in the vacation rental's advertisement; and
 - Attest to the best of their knowledge that the license number for the vacation rental property and the applicable tax numbers are current, valid, and accurately stated in the advertisement.
- Verify and display the vacation rental property's license number; the verification must occur before the platform publishes the rental property's advertisement, and re-occur on a quarterly basis.
- Display the vacation rental property's applicable tax numbers.
- Provide to the division on a quarterly basis, by file transfer protocol or electronic data exchange file:
 - The uniform resource locator (URL) for the Internet address of the vacation rental advertisement; and
 - Unless otherwise stated in the advertisement at the provided URL, the physical address of the vacation rental, including the unit designation, the vacation rental license number, and applicable tax numbers.
- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.
- Adopt an anti-discrimination plan and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

The division must maintain vacation rental license information in a readily accessible electronic format.

The bill provides processes for the division to issue a cease and desist order for any person who violates ch. 509, F.S. The bill authorizes the division to seek an injunction or a writ of mandamus to enforce a cease and desist order. If the DBPR is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, F.S.,³⁷ it is entitled to collect its attorney fees and costs, together with any cost of collection.

³⁷ Section 120.569, F.S., appears to be an incorrect reference. Section 120.69, F.S., provides the administrative procedures for the enforcement of agency actions, including the assessment of penalties.

Tax Collection and Reporting Requirements

The bill creates s. 509.243(4), F.S., to require advertising platforms to collect and remit taxes due under ss. 125.0104,³⁸ 125.0108,³⁹ 205.044,⁴⁰ 212.03,⁴¹ 212.0305,⁴² and 212.055, F.S.,⁴³ resulting from the reservation of a vacation rental property and payment therefor through an advertising platform.

The bill also amends s. 212.03(3), F.S., to include the tax collection and remittance requirements for advertising platforms within ch. 212, F.S., and to:

- Provide that the taxes an advertising platform must collect and remit are based on the total rental amount charged by the owner or operator for use of the vacation rental.
- Exclude service fees from the calculation of taxes remitted by an advertising platform to the Department of Revenue (DOR), unless the advertising platform owns, is related to, operates, or manages the vacation rental.
- Require the DOR and other jurisdictions to allow advertising platforms to register, collect, and remit such taxes.

The bill also amends s. 509.013, F.S., to define the term “merchant business taxes” as the tax imposed under s. 205.044, F.S. The bill includes the merchant business tax numbers as one of the tax account number vacation rental owners or operators must include in their advertisement on an advertising platform and as one of the taxes advertising platforms must collect and remit.

The bill authorizes the DOR to adopt emergency rules, which are effective for six months and may be renewed until permanent rules are adopted. This emergency rulemaking authority expires on January 1, 2023.

Sexual Predators and Offenders Registration

The bill amends s. 775.21, F.S., to redefine the term “temporary residence” in the context of sexual predator or offender registration requirements, to mean lodging in a vacation rental for 24 hours or more. Under current law, a sexual offender or predator must register at the local sheriff’s office no later than by 5:00 p.m., 48 hours after establishing a temporary residence in a vacation rental.

Community Associations

The bill provides that the application of vacation rental provisions created by the bill do not supersede any current or future declaration or declaration of condominium, cooperative documents, or declaration of covenants or declaration for a homeowners’ association.

³⁸ Section 125.0104, F.S., relates to the local option tourist development tax.

³⁹ Section 125.0108, F.S., relates to the tourist impact tax in areas within a county designated as an area of critical state concern.

⁴⁰ Section 205.044, F.S., relates to the merchant business tax measured by gross receipts.

⁴¹ Section 212.03, F.S., relates to the transient rentals tax.

⁴² Section 212.0305, F.S., relates to convention development taxes.

⁴³ Section 212.055, F.S., relates to discretionary sales taxes.

Effective Date

The bill takes effect upon becoming law. However, the provisions of s. 509.243, F.S., relating to advertising platforms, take effect January 1, 2022.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

The bill does not affect current fees for a vacation rental license.

The Department of Business and Professional Regulation anticipates an indeterminate increase in its collection of vacation rental license fees because vacation rentals currently operating without a license would require a license number to post an advertisement on an advertising platform. The department also anticipates an indeterminate increase in fines collected due to noncompliance.⁴⁴

Local governments may see an increase in local tourist development taxes.

The Revenue Estimating Conference has not reviewed the fiscal impact of this bill.

B. Private Sector Impact:

Indeterminate.

⁴⁴ See note 5, *supra* at page 7.

C. Government Sector Impact:

A local government may have an indeterminate decrease of revenue if the local government currently requires a vacation rental license or registration fee. Under the bill, a local government may not require a vacation rental to register or obtain such a license.

The DBPR estimates a cost of \$370,185 (\$194,042 recurring) for three full-time employees and seven OPS employees.⁴⁵

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 159.27, 212.03, 212.08, 316.1955, 404.056, 477.0135, 509.221, 509.013, 509.032, 509.241, and 509.243, 553.5041, 705.17, 705.185, 717.1355, and 877.24.

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

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

CS by Regulated Industries on February 16, 2021:

The committee substitute:

- Amends s. 212.03(3), F.S., to include the tax collection and remittance requirements for advertising platforms within ch. 212, F.S., and to:
 - Clarify that the taxes an advertising platform must collect and remit are based on the total rental amount charged by the owner or operator for use of the vacation rental.
 - Exclude service fees from the calculation of taxes remitted by an advertising platform to the Department of Revenue (DOR), unless the advertising platform owns, is related to, operates, or manages the vacation rental.
 - Require the DOR and other jurisdictions to allow advertising platforms to register, collect, and remit such taxes.
- Includes “merchant business taxes” under s. 205.044, F.S., within the types of taxes an advertising platform must remit.
- Revises the exemption in s. 509.032(7)(c), F.S., for local laws, ordinances, or regulations of a jurisdiction within an area of critical state concern to permit such jurisdictions to regulate and inspect vacation rentals, prohibit vacation rentals, or

⁴⁵ *Id.* at pages 5 and 8.

regulate the duration or frequency of rental of vacation rentals, if the laws, ordinances, or regulations were adopted before June 1, 2011.

- Redefines the term “temporary residence” in the context of sexual predator or offender registration requirements, to mean lodging in a vacation rental for 24 hours or more.
- Authorizes the DOR to adopt emergency rules, which are effective for six months and may be renewed until permanent rules are adopted. This provision expires on January 1, 2023.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Effective January 1, 2022, subsection (2) of
section 212.03, Florida Statutes, is amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement,
exemptions.—

(2) (a) The tax provided for herein shall be in addition to
the total amount of the rental, shall be charged by the lessor



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or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this chapter, who receives said rental or payment. The owner, lessor, or person receiving the rent shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

(b) If a guest uses a payment system on or through an advertising platform, as defined in s. 509.013, to pay for the rental of a vacation rental located in this state, the advertising platform shall collect and remit taxes as provided in this paragraph.

1. An advertising platform, as defined in s. 509.013, which owns, operates, or manages a vacation rental or which is related within the meaning of ss. 1504, 267(b), or 707(b) of the Internal Revenue Code of 1986 to a person who owns, operates, or manages the vacation rental shall collect and remit all taxes due under this section and ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055 which are related to the rental.



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2. An advertising platform to which subparagraph 1. does not apply shall collect and remit all taxes due from the owner, operator, or manager under this section and ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055 which are related to the rental. Of the total amount paid by the lessee or rentee, the amount retained by the advertising platform for reservation or payment service is not taxable under this section or ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055.

In order to facilitate the remittance of such taxes, the department and counties that have elected to self-administer the taxes imposed under chapter 125 must allow advertising platforms to register, collect, and remit such taxes.

Section 2. Section 509.013, Florida Statutes, is reordered and amended to read:

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

(1) "Advertising platform" means a person who:

(a) Provides an online application, software, a website, or a system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;

(b) Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and

(c) Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

(3)~~(1)~~ "Division" means the Division of Hotels and



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Restaurants of the Department of Business and Professional Regulation.

(9)~~(2)~~ "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

(4)~~(3)~~ "Guest" means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

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

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



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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 Families or other similar place regulated under s. 381.0072.

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

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

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

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



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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 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.

~~(10) (a) (5) (a)~~ "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared before ~~prior to~~ being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

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

1. Any place maintained and operated by a public or private



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school, college, or university:

a. For the use of students and faculty; or
b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or
b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit fraternal, or nonprofit civic organization claiming an exclusion under this subparagraph must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

3. Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. Upon request by the division, the event host must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

4. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

5. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.



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6. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

(2)~~(6)~~ "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(12)~~(7)~~ "Single complex of buildings" means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(13)~~(8)~~ "Temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or



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214 sold to the general public.

215 ~~(14)~~~~(9)~~ "Theme park or entertainment complex" means a
216 complex comprised of at least 25 contiguous acres owned and
217 controlled by the same business entity and which contains
218 permanent exhibitions and a variety of recreational activities
219 and has a minimum of 1 million visitors annually.

220 ~~(15)~~~~(10)~~ "Third-party provider" means, for purposes of s.
221 509.049, any provider of an approved food safety training
222 program that provides training or such a training program to a
223 public food service establishment that is not under common
224 ownership or control with the provider.

225 ~~(17)~~~~(11)~~ "Transient establishment" means any public lodging
226 establishment that is rented or leased to guests by an operator
227 whose intention is that such guests' occupancy will be
228 temporary.

229 ~~(18)~~~~(12)~~ "Transient occupancy" means occupancy when it is
230 the intention of the parties that the occupancy will be
231 temporary. There is a rebuttable presumption that, when the
232 dwelling unit occupied is not the sole residence of the guest,
233 the occupancy is transient.

234 ~~(16)~~~~(13)~~ "Transient" means a guest in transient occupancy.

235 ~~(7)~~~~(14)~~ "Nontransient establishment" means any public
236 lodging establishment that is rented or leased to guests by an
237 operator whose intention is that the dwelling unit occupied will
238 be the sole residence of the guest.

239 ~~(8)~~~~(15)~~ "Nontransient occupancy" means occupancy when it is
240 the intention of the parties that the occupancy will not be
241 temporary. There is a rebuttable presumption that, when the
242 dwelling unit occupied is the sole residence of the guest, the



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occupancy is nontransient.

~~(6) (16)~~ "Nontransient" means a guest in nontransient occupancy.

(5) "Merchant business tax receipt" means a business tax receipt or registration issued by a municipality that imposes a tax under s. 205.044 on transient occupancy.

Section 3. Paragraph (c) of subsection (3) and subsection (7) of section 509.032, Florida Statutes, are amended to read:
509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors



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and notify the event sponsors of the availability of the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013 ~~s. 509.013(5)(b)~~, a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than \$105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than \$1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments, including vacation rentals, and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is expressly preempted to the state. A local law, ordinance, or regulation may not allow or require the local inspection or licensing of public lodging establishments, including vacation rentals, or public food service establishments. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public



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food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation rental if the law, ordinance, or regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242, the property is used as a long-term rental subject to chapter 83, or the property owner chooses not to rent the property. However, a local law, ordinance, or regulation may not prohibit ~~vacation~~ rentals or regulate the duration or frequency of ~~rental of vacation~~ rentals. The prohibitions set forth in this paragraph do ~~This paragraph does~~ not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is being amended to be less restrictive with regard to a prohibition, duration, or frequency regulation.

(c) Paragraph (b) and the provisions of paragraph (a) relating to the licensing of vacation rentals do ~~does~~ not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, in any jurisdiction within ~~exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern, as designated by s. 380.0552 or chapter 28-36, Florida Administrative Code. Any such local law, ordinance, or regulation may be amended so long as the amendment is not more restrictive than the existing law, ordinance, or~~



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regulation.

(d) The regulation of advertising platforms is preempted to the state and advertising platforms shall be regulated under this chapter designation.

Section 4. Effective January 1, 2022, subsection (3) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside in the ~~office or lobby of the~~ licensed establishment. Public food service establishments that which offer catering services must ~~shall~~ display their license number on all advertising for catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also display the vacation rental license number, the applicable Florida sales tax registration number, and the applicable merchant business tax receipt or tourist development tax account number under which such taxes must be paid for each rental of the property as a vacation rental.

Section 5. Effective January 1, 2022, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number, the applicable Florida sales tax registration number, and the applicable merchant business tax receipt or tourist development tax account number under which such taxes must be paid before the advertisement may be listed; and



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2. Attest to the best of their knowledge that the license number for the vacation rental property and the applicable tax numbers are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the vacation rental license number, the applicable Florida sales tax registration number, and the applicable merchant business tax receipt or tourist development tax number. The advertising platform must verify that the vacation rental license number provided by the owner or operator is valid and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) The division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must provide to the division on a quarterly basis, by file transfer protocol or electronic data exchange file, a list of all vacation rentals located in this state which are advertised on its platform, along with the following information for each vacation rental:

(a) The uniform resource locator for the Internet address of the vacation rental advertisement.

(b) Unless otherwise stated in the vacation rental advertisement at the Internet address provided pursuant to paragraph (a), the physical address of the vacation rental,



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including any unit designation, the vacation rental license number provided by the owner or operator, the applicable Florida sales tax registration number, and the applicable merchant business tax receipt or tourist development tax account number under which taxes will be remitted for the rentals commenced through the advertisement.

(3) An advertising platform must remove from public view an advertisement or a listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

(4) If a guest uses a payment system on or through an advertising platform to pay for the rental of a vacation rental located in this state, the advertising platform shall collect and remit all taxes due under ss. 125.0104, 125.0108, 205.044, 212.03, 212.0305, and 212.055 related to the rental as provided in s. 212.03(2)(b).

(5) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provision



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of the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, it is entitled to collect attorney fees and costs, together with any cost of collection.

(6) Advertising platforms must adopt an antidiscrimination policy to help prevent discrimination among their users and must inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

Section 6. Paragraph (n) of subsection (2) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

(2) DEFINITIONS.—As used in this section, the term:

(n) "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. The term also includes a vacation rental, as defined in s. 509.242, where a person lodges for 24 hours or more.

Section 7. Subsection (12) of section 159.27, Florida Statutes, is amended to read:

159.27 Definitions.—The following words and terms, unless the context clearly indicates a different meaning, shall have the following meanings:



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(12) "Public lodging or restaurant facility" means property used for any public lodging establishment as defined in s. 509.242 or public food service establishment as defined in s. 509.013 ~~s. 509.013(5)~~ if it is part of the complex of, or necessary to, another facility qualifying under this part.

Section 8. Paragraph (jj) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and



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shall pay the tax. The department may adopt rules to administer this subsection.

(jj) *Complimentary meals.*—Also exempt from the tax imposed by this chapter are food or drinks that are furnished as part of a packaged room rate by any person offering for rent or lease any transient living accommodations as described in s. 509.013 ~~s. 509.013(4)(a)~~ which are licensed under part I of chapter 509 and which are subject to the tax under s. 212.03, if a separate charge or specific amount for the food or drinks is not shown. Such food or drinks are considered to be sold at retail as part of the total charge for the transient living accommodations. Moreover, the person offering the accommodations is not considered to be the consumer of items purchased in furnishing such food or drinks and may purchase those items under conditions of a sale for resale.

Section 9. Paragraph (b) of subsection (4) of section 316.1955, Florida Statutes, is amended to read:

316.1955 Enforcement of parking requirements for persons who have disabilities.—

(4)

(b) Notwithstanding paragraph (a), a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ which provides parking in designated areas for persons who have disabilities may allow any vehicle that is transporting a person who has a disability to remain parked in a space reserved for persons who have disabilities throughout the period the theme park is open to the public for that day.

Section 10. Subsection (5) of section 404.056, Florida Statutes, is amended to read:



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404.056 Environmental radiation standards and projects;
certification of persons performing measurement or mitigation
services; mandatory testing; notification on real estate
documents; rules.—

(5) NOTIFICATION ON REAL ESTATE DOCUMENTS.—Notification
shall be provided on at least one document, form, or application
executed at the time of, or prior to, contract for sale and
purchase of any building or execution of a rental agreement for
any building. Such notification shall contain the following
language:

"RADON GAS: Radon is a naturally occurring radioactive gas
that, when it has accumulated in a building in sufficient
quantities, may present health risks to persons who are exposed
to it over time. Levels of radon that exceed federal and state
guidelines have been found in buildings in Florida. Additional
information regarding radon and radon testing may be obtained
from your county health department."

The requirements of this subsection do not apply to any
residential transient occupancy, as described in s. 509.013 ~~s.~~
~~509.013(12)~~, provided that such occupancy is 45 days or less in
duration.

Section 11. Subsection (6) of section 477.0135, Florida
Statutes, is amended to read:

477.0135 Exemptions.—

(6) A license is not required of any individual providing
makeup or special effects services in a theme park or
entertainment complex to an actor, stunt person, musician,



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extra, or other talent, or providing makeup or special effects services to the general public. The term "theme park or entertainment complex" has the same meaning as in s. 509.013 ~~s. 509.013(9)~~.

Section 12. Paragraph (b) of subsection (2) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(2)

(b) Within a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, the bathrooms are not required to be in the same building as the public food service establishment, so long as they are reasonably accessible.

Section 13. Paragraph (b) of subsection (5) of section 553.5041, Florida Statutes, is amended to read:

553.5041 Parking spaces for persons who have disabilities.—

(5) Accessible perpendicular and diagonal accessible parking spaces and loading zones must be designed and located to conform to ss. 502 and 503 of the standards.

(b) If there are multiple entrances or multiple retail stores, the parking spaces must be dispersed to provide parking at the nearest accessible entrance. If a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ provides parking in several lots or areas from which access to the theme park or entertainment complex is provided, a single lot or area may be designated for parking by persons who have disabilities, if the lot or area is located on the shortest accessible route to an accessible entrance to the theme park or entertainment complex or to transportation to such an accessible entrance.



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Section 14. Subsection (2) of section 705.17, Florida Statutes, is amended to read:

705.17 Exceptions.—

(2) Sections 705.1015-705.106 do not apply to any personal property lost or abandoned on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with s. 705.185.

Section 15. Section 705.185, Florida Statutes, is amended to read:

705.185 Disposal of personal property lost or abandoned on the premises of certain facilities.—When any lost or abandoned personal property is found on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with this section, any lost or abandoned property must be delivered to such owner or operator, who must take charge of the property and make a record of the date such property was found. If the property is not claimed by its owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the owner or operator of the premises, the owner or operator of the premises may not sell and must dispose of the property or donate it to a charitable institution that is exempt



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from federal income tax under s. 501(c)(3) of the Internal Revenue Code for sale or other disposal as the charitable institution deems appropriate. The rightful owner of the property may reclaim the property from the owner or operator of the premises at any time before the disposal or donation of the property in accordance with this section and the established policies and procedures of the owner or operator of the premises. A charitable institution that accepts an electronic device, as defined in s. 815.03(9), access to which is not secured by a password or other personal identification technology, shall make a reasonable effort to delete all personal data from the electronic device before its sale or disposal.

Section 16. Section 717.1355, Florida Statutes, is amended to read:

717.1355 Theme park and entertainment complex tickets.—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

Section 17. Subsection (8) of section 877.24, Florida Statutes, is amended to read:

877.24 Nonapplication of s. 877.22.—Section 877.22 does not apply to a minor who is:

(8) Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~.

Section 18. The application of this act does not supersede



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any current or future declaration or declaration of condominium
adopted pursuant to chapter 718, Florida Statutes, cooperative
document adopted pursuant to chapter 719, Florida Statutes, or
declaration or declaration of covenant adopted pursuant to
chapter 720, Florida Statutes.

Section 19. (1) The Department of Revenue is authorized,
and all conditions are deemed to be met, to adopt emergency
rules pursuant to s. 120.54(4), Florida Statutes, for the
purpose of implementing s. 212.03, Florida Statutes, including
establishing procedures to facilitate the remittance of taxes.

(2) Notwithstanding any other provision of law, emergency
rules adopted pursuant to subsection (1) are effective for 6
months after adoption and may be renewed during the pendency of
procedures to adopt permanent rules addressing the subject of
the emergency rules.

(3) This section expires January 1, 2024.

Section 20. Except as otherwise expressly provided in this
act, this act shall take effect upon becoming a law.

===== 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 vacation rentals; amending s.
212.03, F.S.; requiring advertising platforms to
collect and remit taxes for certain transactions;
reordering and amending s. 509.013, F.S.; defining the
terms "advertising platform" and "merchant business



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tax receipt"; amending s. 509.032, F.S.; conforming a cross-reference; preempting the regulation of vacation rentals to the state; providing exceptions; preempting the regulation of advertising platforms to the state; amending s. 509.241, F.S.; requiring licenses issued by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to be displayed conspicuously to the public inside the licensed establishment; requiring the operator of certain vacation rentals to also display its vacation rental license number and applicable merchant business tax receipt or tax account numbers; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements and attest to certain information; requiring advertising platforms to display and verify such information; requiring the division to maintain certain information in a readily accessible electronic format; requiring advertising platforms to quarterly provide the division with certain information regarding vacation rentals in this state listed on the platforms; requiring advertising platforms to remove an advertisement or listing under certain conditions and within a specified timeframe; requiring advertising platforms to collect and remit taxes for certain transactions; authorizing the division to issue and deliver a notice to cease and desist for certain violations; providing that such notice does



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not constitute agency action for which certain hearings may be sought; authorizing the division to file certain proceedings; authorizing the division to seek certain remedies for the purpose of enforcing a cease and desist notice; authorizing the division to collect attorney fees and costs under certain circumstances; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; amending s. 775.21, F.S.; revising the definition of the term "temporary residence"; amending ss. 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 705.17, 705.185, 717.1355, and 877.24, F.S.; conforming cross-references to changes made by the act; providing applicability; authorizing the department to adopt emergency rules; providing requirements and an expiration for such rules; providing for the expiration of such rulemaking authority; providing effective dates.

By Senator Diaz

36-00597A-21

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1 A bill to be entitled
 2 An act relating to vacation rentals; amending s.
 3 509.013, F.S.; defining the term "advertising
 4 platform"; amending s. 509.032, F.S.; preempting the
 5 regulation of vacation rentals to the state;
 6 prohibiting a local law, ordinance, or regulation from
 7 allowing or requiring inspections or licensing of
 8 public lodging establishments, including vacation
 9 rentals, or public food service establishments;
 10 authorizing a local law, ordinance, or regulation to
 11 regulate certain activities under certain
 12 circumstances; providing an exemption; expanding an
 13 exemption to allow certain ordinances adopted on or
 14 before a certain date to be amended to be less
 15 restrictive; preempting the regulation of advertising
 16 platforms to the state; amending s. 509.241, F.S.;
 17 requiring licenses issued by the Division of Hotels
 18 and Restaurants of the Department of Business and
 19 Professional Regulation to be displayed conspicuously
 20 to the public inside the licensed establishment;
 21 requiring the owner or operator of certain vacation
 22 rentals to also display its vacation rental license
 23 number and applicable tax account numbers; creating s.
 24 509.243, F.S.; requiring advertising platforms to
 25 require that persons placing advertisements for
 26 vacation rentals include certain information in the
 27 advertisements; requiring advertising platforms to
 28 display and verify such information; requiring the
 29 division to maintain certain information in a readily

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

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30 accessible electronic format; requiring advertising
 31 platforms to quarterly provide the division with
 32 certain information regarding vacation rentals in this
 33 state listed on the platforms; requiring advertising
 34 platforms to remove an advertisement or a listing
 35 under certain conditions and within a specified
 36 timeframe; requiring advertising platforms to collect
 37 and remit taxes imposed under chs. 125 and 212, F.S.,
 38 for certain transactions; authorizing the Department
 39 of Revenue to adopt rules; authorizing the division to
 40 issue and deliver a notice to cease and desist for
 41 certain violations; providing that such notice does
 42 not constitute agency action for which certain
 43 hearings may be sought; authorizing the division to
 44 file certain proceedings and to seek certain remedies
 45 for the purpose of enforcing a cease and desist
 46 notice; authorizing the collection of attorney fees
 47 and costs under certain circumstances; requiring
 48 advertising platforms to adopt an antidiscrimination
 49 plan and to inform their users of the policy's
 50 provisions; providing applicability; providing
 51 effective dates.

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

54
 55 Section 1. Subsection (17) is added to section 509.013,
 56 Florida Statutes, to read:
 57 509.013 Definitions.—As used in this chapter, the term:
 58 (17) "Advertising platform" means an entity that:

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

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(a) Provides an online application, software, a website, or a system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;

(b) Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and

(c) Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the entity collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

Section 2. Subsection (7) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments, including vacation rentals, and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is expressly preempted to the state. A local law, ordinance, or regulation may not allow or require the local inspection or licensing of public lodging establishments, including vacation rentals, or public food service establishments. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to

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ss. 553.80 and 633.206.

(b) A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation rental if the law, ordinance, or regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242(1)(c), the property is used as a long-term rental subject to chapter 83, or the property owner chooses not to rent the property. However, a local law, ordinance, or regulation may not prohibit ~~vacation~~ rentals or regulate the duration or frequency of ~~rental of vacation~~ rentals. The prohibitions set forth in this paragraph do ~~This paragraph does~~ not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is being amended to be less restrictive with regard to a prohibition or a duration or frequency regulation.

(c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

(d) The regulation of advertising platforms is preempted to the state, and advertising platforms shall be regulated under this chapter.

Section 3. Effective January 1, 2022, subsection (3) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(3) DISPLAY OF LICENSE.—Any license issued by the division

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117 ~~must shall~~ be conspicuously displayed to the public inside ~~in~~
 118 the office or lobby of the licensed establishment. Public food
 119 service establishments that ~~which~~ offer catering services must
 120 ~~shall~~ display their license number on all advertising for
 121 catering services. The owner or operator of a vacation rental
 122 offered for transient occupancy through an advertising platform
 123 must also display the vacation rental license number and the
 124 applicable Florida sales tax registration and tourist
 125 development tax account numbers under which such taxes must be
 126 paid for each rental of the property as a vacation rental.

127 Section 4. Effective January 1, 2022, section 509.243,
 128 Florida Statutes, is created to read:

129 509.243 Advertising platforms.—

130 (1) (a) An advertising platform must require that a person
 131 who places an advertisement for the rental of a vacation rental:

132 1. Include in the advertisement the vacation rental license
 133 number and the applicable Florida sales tax registration and
 134 tourist development tax account numbers under which such taxes
 135 must be paid before the advertisement may be listed; and

136 2. Attest to the best of his or her knowledge that the
 137 license number for the vacation rental property and the
 138 applicable tax numbers are current, valid, and accurately stated
 139 in the advertisement.

140 (b) An advertising platform must display the vacation
 141 rental license number and applicable Florida sales tax
 142 registration and tourist development tax numbers. The
 143 advertising platform must verify that the vacation rental
 144 license number provided by the owner or operator is valid and
 145 applies to the subject vacation rental before publishing the

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146 advertisement on its platform and again at the end of each
 147 calendar quarter that the advertisement remains on its platform.

148 (c) The division shall maintain vacation rental license
 149 information in a readily accessible electronic format which is
 150 sufficient to facilitate prompt compliance with the requirements
 151 of this subsection by an advertising platform or a person
 152 placing an advertisement on an advertising platform for
 153 transient rental of a vacation rental.

154 (2) An advertising platform must provide to the division on
 155 a quarterly basis, by file transfer protocol or electronic data
 156 exchange file, a list of all vacation rentals located in this
 157 state which are advertised on its platform, along with the
 158 following information for each vacation rental:

159 (a) The uniform resource locator for the Internet address
 160 of the vacation rental advertisement; and

161 (b) Unless otherwise stated in the vacation rental
 162 advertisement at the Internet address provided pursuant to
 163 paragraph (a), the physical address of the vacation rental,
 164 including any unit designation, the vacation rental license
 165 number provided by the owner or operator, and the applicable
 166 Florida sales tax registration and tourist development tax
 167 account numbers under which taxes will be remitted for the
 168 rentals commenced through the advertisement.

169 (3) An advertising platform must remove from public view an
 170 advertisement or a listing from its online application,
 171 software, website, or system within 15 business days after being
 172 notified by the division in writing that the subject
 173 advertisement or listing for the rental of a vacation rental
 174 located in this state fails to display a valid license number

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175 issued by the division.

176 (4) If a guest uses a payment system on or through an
 177 advertising platform, as defined in s. 509.013(17), to pay for
 178 the rental of a vacation rental located in this state, the
 179 advertising platform must collect and remit all taxes imposed
 180 under chapters 125 and 212 resulting from the rental. When
 181 calculating taxes imposed under chapters 125 and 212, an
 182 advertising platform may exclude the amount of any fees directly
 183 attributable to the service provided by the advertising
 184 platform. The Department of Revenue may adopt rules to implement
 185 this subsection.

186 (5) If the division has probable cause to believe that a
 187 person not licensed by the division has violated this chapter or
 188 any rule adopted pursuant thereto, the division may issue and
 189 deliver to such person a notice to cease and desist from the
 190 violation. The issuance of a notice to cease and desist does not
 191 constitute agency action for which a hearing under ss. 120.569
 192 and 120.57 may be sought. For the purpose of enforcing a cease
 193 and desist notice, the division may file a proceeding in the
 194 name of the state seeking the issuance of an injunction or a
 195 writ of mandamus against any person who violates any provision
 196 of the notice. If the department is required to seek enforcement
 197 of the notice for a penalty pursuant to s. 120.569, it is
 198 entitled to collect attorney fees and costs, together with any
 199 cost of collection.

200 (6) Advertising platforms must adopt an antidiscrimination
 201 plan to help prevent discrimination among their users and must
 202 inform all users of their services that it is illegal to refuse
 203 accommodation to an individual based on race, creed, color, sex,

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204 pregnancy, physical disability, or national origin pursuant to
 205 s. 509.092.

206 Section 5. The application of this act does not supersede
 207 any current or future declaration or declaration of condominium
 208 adopted pursuant to chapter 718, Florida Statutes, cooperative
 209 document adopted pursuant to chapter 719, Florida Statutes, or
 210 declaration or declaration of covenants adopted pursuant to
 211 chapter 720, Florida Statutes.

212 Section 6. Except as otherwise expressly provided in this
 213 act, this act shall take effect upon becoming a law.

Florida Attorney General Advisory Legal Opinion

Number: AGO 2016-12

Date: October 5, 2016

Subject: Municipalities -- Vacation Rentals -- Zoning

Mr. Kerry L. Ezrol, City Attorney
Ms. Farah L. Nerette, Assistant City Attorney
Goren Cherof Doody & Ezrol P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308

RE: MUNICIPALITIES - VACATION RENTALS - PREEMPTION - ZONING - whether the city could limit vacation rentals through a proposed ordinance (1) imposing distance separation requirements or (2) limiting the percentage or number of vacation rentals, in light of the preemption language regarding vacation rentals in s. 509.032(7), Fla. Stat.

Dear Mr. Ezrol and Ms. Nerette:

On behalf of the City Commission of the City of Wilton Manors, you have asked for an opinion on the following question:

Does section 509.032(7), Florida Statutes, prohibit the city from: (A) Implementing distance separation requirements between vacation rentals; or (B) Limiting the percentage or number of vacation rentals on city streets or in city neighborhoods?

In sum:

Section 509.032(7)(b), Florida Statutes, allows some regulation of vacation rentals, but prevents local government from enacting a law, ordinance, or regulation that prohibits vacation rentals. Therefore, the city may not impose spacing or proportional regulations that would have the effect of preventing eligible housing as defined in section 509.242, Florida Statutes, from being used as a vacation rental.

You state that Wilton Manors is considering enacting a zoning ordinance that would set distance separation requirements between vacation rentals or would limit the percentage or number of vacation rentals on city streets or in city neighborhoods. You represent that the ordinance would implement various health, safety, and welfare goals, such as reducing vehicle traffic; reducing the need for additional parking; reducing noise detrimental to surrounding residential uses; reducing the need for

additional police, fire, emergency services, utilities, and neighborhood watch programs; and maintaining the residential character of neighborhoods. Although municipalities are permitted to enact zoning ordinances to accomplish such legitimate goals, an ordinance may not conflict with a controlling provision of state law.[1] You believe that the proposed ordinance would not forbid vacation rentals and thus would not run afoul of section 509.032(7)(b), Florida Statutes, which states that a local government may not enact an ordinance that "prohibit[s] vacation rentals." You have not provided this office with the language of your proposed ordinance (nor would this office interpret such an ordinance if you had), thus, my comments must be general in nature.

To answer your question, it is necessary to review the Legislature's treatment of preemption in relation to vacation rentals in section 509.032, Florida Statutes.[2] Part I of Chapter 509, Florida Statutes, contains laws affecting public lodging and public food service establishments. In 1993, the Legislature amended section 509.032, Florida Statutes, adding paragraph (7) to preempt all regulation of public lodging[3] and public food service establishments to the state. The provision stated, in pertinent part: "The regulation and inspection of public lodging establishments and public food service establishments ... are preempted to the state." [4]

In 2011, the Legislature combined two types of public lodgings - "resort condominiums" and "resort dwellings" - under the new term "vacation rentals," and added a provision to specifically address an issue regarding vacation-rental regulation. According to the final staff analysis:

"The regulation of public lodging establishments is preempted to the state. Local governments can conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code.[5] However, some local governments have been prohibiting or restricting transient resort condominiums and dwellings by ordinance." [6]

To address this issue, the Legislature added a new provision, (7)(b), which stated:

"(b) A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011." [7]

In 2014, the Legislature amended paragraph (7)(b), "revising the permitted scope of local laws, ordinances, and regulations regarding vacation rentals." [8] The provision now allows limited new regulation subject to the following limitations:

"(b) A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or

regulation adopted on or before June 1, 2011."

The final staff analysis for the legislation stated: "The bill removes the total preemption to the state for the regulation of vacation rentals, and permits local governments to regulate vacation rentals, provided those regulations do not prohibit vacation rentals or restrict the duration or frequency of vacation rentals." [9]

That same year, the City of Wilton Manors asked this office whether the 2014 amendment permitted the city to use zoning ordinances to regulate the location of vacation rentals. In Attorney General Opinion 2014-09, this office concluded:

"[W]hile a local government may regulate vacation rentals, it may not enact a local law, ordinance, or regulation which would operate to prohibit vacation rentals. *To the extent a zoning ordinance addresses vacation rentals in an attempt to prohibit them in a particular area where residences are otherwise allowed*, it would appear that a local government would have exceeded the regulatory authority granted in section 509.032(7)(b), Florida Statutes." (e.s.)

Section 509.242(1)(c), Florida Statutes, defines "vacation rental" as "any unit or group of units in a condominium or cooperative 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 but that is not a timeshare project." Section 509.013(4)(a)1., Florida Statutes, defines "transient public lodging establishment" as "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."

It appears from these definitions that any unit, group of units, or house as enumerated in section 509.242(1)(c), Florida Statutes, is eligible to be used as a transient public lodging establishment and, hence, a vacation rental. There are no statutory provisions that impose restrictions against owners from offering eligible housing as vacation rentals. Nor have you identified any municipal law, ordinance, or regulation enacted prior to the grandfathering date in the statute, June 1, 2011, that restricted any such housing from being offered as a vacation rental in Wilton Manors. [10] An ordinance requiring certain distances between vacation rentals or limiting their numbers in areas within the city could result in a prohibition against using eligible units as vacation rentals when other existing units have already satisfied the spacing or percentage formulae. Although the proposed ordinance would not absolutely forbid vacation rentals in the City of Wilton Manors, a distance separation requirement and a numerical or percentage limitation have the express purpose of prohibiting units above a certain threshold from being used as vacation rentals, which is contrary to section 509.032(7)(b), Florida Statutes. [11] When there is any doubt as to whether a municipal ordinance may impair the operation of a statute, the

doubt must be resolved in favor of the statute and against the ordinance. [12]

In *Moore v. Thompson*, [13] the Florida Supreme Court discussed the propriety of legislation that prohibited a class of businesses from operating, in the guise of regulating it. A blue law made it unlawful for businesses to sell motor vehicles on Sunday and legal holidays. Although the Court acknowledged that the Legislature had clear statutory authority to regulate automobile dealerships, this law exceeded such authority.

"While the act is one purporting to regulate this particular business, it is much more than a regulation. Chapter 318, 319 and 320, Florida Statutes, F.S.A., are illustrations of regulations of a particular industry while the object of this act is not to regulate but to prohibit such business on designated days.

The power to regulate does not encompass the power to prohibit." [14] (e.s.)

The Court concluded that the state had failed to provide a valid and substantial reason to single out automobile dealerships, and ruled that the law was unconstitutional. The Court cited an earlier case involving legislation in 1938 requiring all persons conducting auctions to post a bond of \$2,000.00 and pay a license tax of \$1,000.00 every fifteen days, regardless of the character or amount of the sale. [15] The Court had concluded in that case that the law was improper because the unreasonably high fees made it prohibitive rather than regulative. "Such an imposition amounts to a prohibition of large numbers from engaging in a legitimate business and is beyond all the necessities for the legislation." [16] Similarly, the proposed Wilton Manors ordinance might prohibit certain vacation rentals, when section 509.032(7) only permits local governments to regulate them.

The two circuit court orders you provided to this office do not support the proposed Wilton Manors ordinance. In one case, the Flagler County Circuit Court was asked to consider an ordinance prescribing the documentation that must be provided to the county for short-term vacation rentals, and a maximum occupancy limit for all vacation rentals. [17] In the other, the Manatee County Circuit Court considered an ordinance setting a maximum occupancy limit for each vacation rental unit in the City of Ana Maria. [18] The court in each case determined that the ordinance at issue did not prohibit vacation rentals or regulate their duration or frequency in violation of section 509.032(7)(b), Florida Statutes. Those ordinances are distinguishable from what Wilton Manors proposes, because they merely added regulatory requirements for existing and new vacation rentals and did not limit the number of vacation rentals that would be allowed in a geographic area.

Indeed, in the final staff analysis of the 2014 legislation, the section entitled "Effect of the Bill" stated:

"The bill permits local governments to create regulation that distinguishes

vacation rentals from other residential property. In the past [prior to June 1, 2011], local government regulations have included noise, parking, registration, and signage requirements for vacation rentals." [19]

These matters and those addressed in the circuit court cases you cited are the kinds of regulations that are now permitted under the 2014 amendment to paragraph (7) (b) as exceptions to state preemption.

Accordingly, to the extent that the ordinance you are considering could have the effect of prohibiting a statutorily-eligible housing unit from being used as a vacation rental, it is my opinion that the City of Wilton Manors would be exceeding the regulatory authority granted in section 509.032(7) (b), Florida Statutes.

Sincerely,

Pam Bondi
Attorney General

PB/tebg

[1] See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1246-47 (Fla. 2006); *City of Casselberry v. Orange County Police Benevolent Ass'n*, 482 So. 2d 336, 340 (Fla. 1986).

[2] See *Massey v. David*, 979 So. 2d 931, 942 (Fla. 2008) (legislative history can be an "invaluable tool" in determining the meaning of statutory language); *Kasischke v. State*, 991 So. 2d 803, 810 (Fla. 2008) (although staff analyses do not determine legislative intent, they provide "one touchstone of the collective legislative will").

[3] Public lodging establishments included hotels, motels, resort condominiums, nontransient and transient apartments, rooming houses, resort dwellings, and bed and breakfast inns. Section 509.242, Fla. Stat. (2010).

[4] Section 2, Ch. 93-53, Laws of Fla.

[5] The Legislature had amended s. 509.032, Fla. Stat., in 2000, and added to paragraph (7): "This subsection does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.022." Section 47, Ch. 2000-141, Laws of Fla.

[6] House of Representatives Final Bill Analysis, CS/CS/CS/HB 883, dated June 28, 2011.

[7] See s. 2, Ch. 2011-119, Laws of Fla.

[8] See Preamble, Ch. 2014-71, Laws of Fla.

[9] House of Representatives Final Bill Analysis, Local & Federal Affairs Committee, CS/HB 307, dated June 19, 2014.

[10] See Inf. Op. to County Attorney Albert J. Hadeed, Flagler County, dated October 22, 2013 (concluding under the plain language of s. 509.242(1)(c) that a single-family house could be used as a vacation rental, subject to regulation by the state, when there were no zoning ordinances in effect prior to June 1, 2011, that would have prevented such use).

[11] The definitions of "prohibit" in Black's Law Dictionary (10th ed. 2014), are: "1. To forbid by law[,] and, "2. To prevent, preclude, or severely hinder."

[12] See *Metro. Dade County v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 504 (Fla. 1999).

[13] 126 So. 2d 543 (Fla. 1960).

[14] *Id.* at 550.

[15] *Id.* at 551 (citing *State ex rel. James v. Gerell*, 188 So. 812 (Fla. 1938)).

[16] *Gerell*, 188 So. at 814.

[17] *30 Cinnamon Beach Way, LLC v. Flagler County*, 2015-CA-167 (Fla. 7th Cir. Ct. June 1, 2015), *aff'd*, 183 So. 3d 373 (Fla. 5th DCA 2016) (*per curiam*).

[18] *Fla. Gulf Coast Vacation Homes, LLC v. City of Anna Maria*, 2016-CA-629 (Fla. 12th Cir. Ct. April 11, 2016).

[19] See *supra* n. 9.



ANALYSIS

2021 AGENCY LEGISLATIVE BILL

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION

BILL NUMBER:	SB 522
BILL TITLE:	Vacation Rentals
BILL SPONSOR:	Sen. Diaz
EFFECTIVE DATE:	Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law

COMMITTEES OF REFERENCE

1) Regulated Industries
2) Commerce and Tourism
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

N/A

SIMILAR BILLS

BILL NUMBER:	N/A
SPONSOR:	N/A

PREVIOUS LEGISLATION

BILL NUMBER:	CS/SB 1128
SPONSOR:	Sen. Diaz
YEAR:	2020
LAST ACTION:	Voted favorable with Commerce and Tourism Committee Substitute.

IDENTICAL BILLS

BILL NUMBER:	HB 219
SPONSOR:	Rep. Fischer

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	2/8/2021
LEAD AGENCY ANALYST:	Michelle Keith, Division of Hotels & Restaurants
ADDITIONAL ANALYST(S):	Jake Whealdon, Acting OGC Rules Tracy Dixon, Service Operations Robin Jordan, Technology
LEGAL ANALYST:	Marc Drexler, Officer of the General Counsel, Division of Hotels and Restaurants

FISCAL ANALYST:	Raleigh Close, Administration

POLICY ANALYSIS

1. **EXECUTIVE SUMMARY**

The bill defines the term “advertising platform” and creates s. 509.243, F.S. The bill preempts the regulation of vacation rentals and advertising platforms to the state, requires advertising platforms to require certain information be included in vacation rental advertisements, requires advertising platforms to provide the Division of Hotels and Restaurants (division) with specified information on a quarterly basis, requires each advertising platform to verify the validity of certain posted information, requires advertising platforms to remove listings not displaying the valid vacation rental license number, and requires the operator of a vacation rental display the division license and certain tax information under specified circumstances. The bill requires the division to maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance by advertising platforms or person placing advertisements with certain requirements. The bill also expressly preempts the inspection and licensing of vacation rentals to the state, prohibits local inspection and licensing of vacation rentals, and provides that the bill does not supersede the authority of condominiums, cooperatives, or homeowners’ associations to govern the use of property. The bill requires the advertising platform to collect and remit all taxes imposed under chs. 212 and 125, F.S., to the Department of Revenue, grants rule development to the Department of Revenue to implement the act, and requires advertising platforms to adopt anti-discrimination plans for refusal of accommodations pursuant to s. 509.092, F.S. Finally, the bill allows the division to issue cease and desist notices for unlicensed activity, grants exceptions to local inspections for compliance with the Florida Building and Florida Fire Prevention Code and maintains the grandfathering of local regulations affecting vacation rentals adopted before June 1, 2011, while allowing for new less restrictive amendments of the existing local regulations.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:**

Transient public lodging establishments are defined in s. 509.013, F.S., as units or dwellings that are rented to guests more than 3 times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which are advertised or held out to the public as a place regularly rented to guests. The division only licenses and regulates the rental of the entire unit or dwelling. The rental of individual rooms within a condominium unit or house is excluded from licensure and regulation under the rooming-house/boardhouse exclusion.

A vacation rental is defined in s. 509.242, F.S., as any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four family, house or dwelling unit that is also a transient lodging establishment but that is not a timeshare project. Public lodging establishments classified as vacation rentals are not subject to statutorily required division inspections but may be inspected by request or upon receipt of a consumer complaint. Local agencies may also inspect establishments for compliance with the Florida Building Code and Florida Fire Prevention Code.

The division currently posts electronic records in .csv format on the DBPR website. Current fiscal year extracts are provided and updated weekly with summary data for inspections, licenses, new establishments and owner changes of both public lodging and public food service establishments. The public lodging license extract provides the operator and business name, the license code and classification type, the mailing and location addresses, associated telephone numbers, the division license number, application approval date, license expiration date and number of units under the license.

Individual properties covered under single, group or collective vacation rental licenses are not currently available or readily accessible on demand in the division’s public license data extracts. To view and verify individual properties covered under a single, group or collective vacation rental license requires individual file research. The primary name, DBA name or license number must be provided and the list, if available, can be furnished by public records request.

Under ch. 61C-3, F.A.C., vacation rental license holders are responsible for reporting to the division any and all houses or units to be included under a license, and must notify the division at least 60 days prior to the expiration of the license anytime a change in the units occurs. License holders may provide lists and report changes using the division’s “Notification of Change for Vacation Rental Form” (DBPR HR-7010), or may notify the division by email or letter.

Licenses issued by the division should be conspicuously displayed in the office or lobby of the establishment and caterers should include their division issued license number on all advertisements.

The division does not currently define, monitor or regulate advertising platforms.

2. EFFECT OF THE BILL:

Section 1 of the bill adds a definition for “advertising platform” to s. 509.013, F.S. To be considered an advertising platform, the platform must meet all three stated criteria: electronic advertisement, provides or maintains a marketplace for vacation rentals, and has a reservation or payment system for the renting of vacation rentals for which a fee is collected or received based on the transaction. The definition only applies to the advertisement of vacation rentals.

Section 2 of the bill reinforces that the regulation of vacation rentals is preempted to the state. The bill also expressly preempts the inspection and licensing of public lodging establishments, including vacation rentals, and public food service establishments to the state. Additionally, the bill states that a local law, ordinance, or regulation may not allow or require vacation rental inspections or licensing by local authorities with the exception of inspections necessary for compliance with the Florida Building Code and Florida Fire Prevention Code. Local agencies may regulate activities that arise when a property is used as a vacation rental if the regulation applies equally to all properties without regard to whether the property is being used as a vacation rental, as a long-term rental, or as a non-rental. The bill also allows local regulations to be amended to be less restrictive with regard to prohibition, duration, or frequency of rentals and still maintain a grandfathered status. The bill preempts the regulation of advertising platforms to the state.

Section 3 of the bill mandates that licenses must be displayed to the public inside a division licensed establishment. Additionally, the bill requires that vacation rental owners must display the rental’s division license number, Florida sales tax number and tourist development tax account numbers in the rental advertisement. This section would take effect January 1, 2022.

Section 4 of the bill creates s. 509.243, F.S., and would take effect January 1, 2022. The section states that an advertising platform must require a person placing a vacation rental advertisement include the division license number, Florida sales tax registration, and tourist development tax number. An advertising platform must also require a person placing a vacation rental advertisement to attest to the validity of the aforementioned information. The advertising platform must display the aforementioned information and must verify the validity of the vacation rental license number before the advertisement is posted to the platform and again at the end of each calendar year quarter the advertisement remains on the platform. The bill requires the division to maintain information on vacation rental licenses in an easily accessible electronic format to facilitate compliance by advertising platforms or person placing an advertisement. The bill requires the advertising platform to provide a list of all vacation rentals advertised on their platform in Florida and include all of the corresponding information regarding the rental such as the Internet address of the advertisement, the physical address of the rental, the license number of the rental provided by the operator and the applicable sales tax and tourist tax numbers to the division on a quarterly basis by electronic data transfer. However, the bill does not require the advertising platform to include the physical address of the rental, the license number of the rental provided by the operator and the applicable sales tax and tourist development tax numbers if they are stated in the vacation rental advertisement located at the provided Internet address. If the advertising platform utilizes an electronic payment system, the platform must collect all applicable imposed taxes under chs. 212 and 125, F.S., on behalf of the vacation rental owner and remit the taxes to the Department of Revenue. However, the advertising platforms may exclude any fees directly attributable to the service provided by the advertising platform. Additionally, the Department of Revenue is authorized to adopt rules to implement the tax provisions. The bill requires the advertising platform to remove a Florida vacation rental advertisement or listing from public view within 15 business days if notified in writing by the division that the vacation rental advertisement has failed to display a valid division license number. The section grants the division the right to issue notices to cease and desist if it has probable cause to believe a person not licensed under ch. 509, F.S., has violated the chapter or rules adopted pursuant thereto, allows the division to file for injunctive or mandamus relief to enforce a notice to cease and desist, and entitles the department to collect any attorney fees and costs, together with cost of collection if the department is required to enforce a notice of penalty pursuant to s. 120.569, F.S. The bill requires advertising platforms to adopt anti-discrimination plans and inform its users that it is illegal to refuse accommodations based on any of items listed in s. 509.092, F.S.

Section 5 of the bill states the act does not supersede any current or future declaration of condominium, any cooperative documents, or any homeowners’ association covenants or declarations.

Section 6 of the bill states that with the exception of sections 3 and 4, the act would take effect upon becoming a law.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y ☐ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	To date, the division has not been contacted by proponents or opponents of the legislation with any stated positions
Opponents and summary of position:	To date, the division has not been contacted by proponents or opponents of the legislation with any stated positions

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y ☐ N ☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y ☒ N ☐

Revenues:	Yes, potential increase in local vacation rental licenses, bed taxes, and other tourism taxes.
Expenditures:	N/A

Does the legislation increase local taxes or fees? If yes, explain.	N/A
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?Y ☒ N ☐

Revenues:	Yes, indeterminate increase in licensing revenue, but it is unknown how many rental advertisements which are currently exempt from licensing would then require licensure. The bill may also result in an indeterminate increase in fines due to noncompliance.
Expenditures:	Increase in staff and costs needed to implement the bill. The division estimates an additional 3 FTE and 7 OPS will be required to implement the provisions of the bill. Additional costs are anticipated to be \$370,185 (\$194,042 recurring). See Additional Comments.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y ☒ N ☐

Revenues:	Unknown
Expenditures:	Vacation rentals previously operating without a division public lodging license would now require proof licensure to post an ad on an advertising platform.
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☒ N ☐

If yes, explain impact.	The bill does not increase or decrease taxes and fees. There may be an indeterminate increase in the amount of taxes and fees collected due to increased compliance with the law. There may be an indeterminate increase in fines imposed due to noncompliance.
Bill Section Number:	Section 4

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?

Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	Section 4 requires the division to maintain rental license information in a "readily accessible electronic format." While the department currently provides online listings of licensees, individual rental units are not captured in the Single Licensing System, Versa: Regulation. The division currently licenses over 152,000 rental units within 26,961 group, single and collective licenses. To add individual rental units, modifications will be needed to Versa: Regulation and Versa: Online to add a new address type, modify public records extracts, and modify online transactions to allow the licensees (i.e., the owners and management companies) to upkeep the data. This provision will also require updates to OnBase document management system routing. • Changes to Versa: Regulation – 40 hours • Changes to Versa: Online – 80 hours • Changes to OnBase routing – 32 hours These modifications can be made with existing resources. While the bill requires advertising platforms to provide quarterly updates of the licensed vacation rentals advertised to the division, it is unclear what the department is supposed to do with this information. As required by the bill, the department will just need to provide an electronic data transfer site for quarterly reporting. If the intent is for the department to collate and process this data, additional resources will be needed. • Set up File Transfer Protocol website – 40 hours These modifications can be made with existing resources. <u>Infrastructure and Licensing Costs</u> Additional staffing required to implement the provisions of this bill (see Additional Comments below) would result in technology infrastructure and licensing costs. Assuming there is not adequate office space in existing department offices, additional undetermined infrastructure costs will be incurred based on the number, location and suitability of adequate space to support the full workforce. For 3 FTE positions to process complaints and compliance cases: • Non-recurring costs for network drops and software licenses – \$5,082.45 • Recurring software license maintenance - \$903.78 For 7 OPS positions to process individual rental units: • Non-recurring costs for network drops and software licenses – \$11,859.05 • Recurring software license maintenance - \$2,108.82 For each additional agent for the Customer Contact Center: • Non-recurring costs for specialized CCC software - \$2,016.99

	• Non-recurring costs for network drops and software licenses – \$1,844.15 • Recurring software license maintenance - \$701.26

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	N/A

ADDITIONAL COMMENTS

Hotels and Restaurants License Processing, Complaints and Investigations:

If passed, the division would be able to notify advertising platforms in writing of a vacation rental advertisement that did not display a valid license number. The division's number of vacation rental complaints received increased 89% from Fiscal Year 2018-19 to for Fiscal Year 2019-20 for a total of 1,391, so anticipating an increase based on the bill as written is difficult to determine. The division anticipates a large but indeterminate influx of complaints from local jurisdictions, tax collectors, vacation rental guests, license holders and concerned homeowners. The division received a total of 3,677 lodging complaints for Fiscal Year 2019-20, with one Operations Review Specialist assigned to complaint intake and processing. Based on this assumption, one Operations Review Specialist FTE is required to process new complaints and to provide written removal notices to advertising platforms regarding valid license numbers. One additional Operations Review Specialist will be needed for every additional 5,000 complaints received.

To process the licensing of previously unlicensed entities, the Division of Hotels and Restaurants will require one Regulatory Specialist II FTE. One additional Regulatory Specialist II FTE will be required for every 15,000 licenses processed.

If the legislative intent is to make the single, group and collective listing unit disclosure requirement part of the readily accessible public information, division staff will require additional resources to research vacation rental licensing files in order to provide the information in a readily accessible format. The division would utilize OPS funds to hire temporary help to build the labor intensive portion of the database until time of implementation is reached. In addition to the temporary help, one additional Government Analyst I FTE is needed to build, design and maintain the vacation rental unit disclosure database and to assist with bridging the proposed systems to those already in place.

The new proposed language requiring a vacation rental operator to display the rental's license in all rental units, and license number in all advertisements may result in an indeterminate number of violations and may require additional field staff resources to implement. For every 785 actionable complaints, the Division of Hotels and Restaurants will require one Sanitation and Safety Specialist FTE to inspect. To process and handle possible additional compliance cases, the Division of Hotels and Restaurants will require one new Operations Review Specialist FTE for every 1,400 additional compliance cases.

The division is not requesting any FTEs for auditing rental advertisement content. The bill does not require the division to check the validity of information in a vacation rental advertisement. In its current state, the bill requires the license holder to attest to the validity of information on the rental advertisement and requires the advertising platform to verify the validity of the license number on the advertisement. Should the proposal language change, the division will require additional staff to audit and verify vacation rental listings.

Staff calculation for required OPS staff:

- Workload: current number of vacation rental licenses: 27,986
- 10 minutes per license to pull and convert list data
- Total minutes to pull and convert all list data: 279,860
(27,986 licenses X 10 min. = 279,860 min.)
- Total hours to convert data: 4,664
(279,860 min. divided by 60 min. = 4,664.33 hrs.)

It is estimated 7 OPS positions will be necessary to complete the data conversion prior to the implementation date.

Total anticipated staff needed: 3 FTE, 7 OPS

1 Operations Review Specialist FTE

1 Regulatory Specialist II FTE

1 Government Analyst I FTE

7 OPS (4,664 hours, at rate of \$15.00/hr)

Total Anticipated Costs: \$370,185 (\$194,042 recurring)

Hotels and Restaurants General Comments:

There are currently 27,986 vacation rental public lodging licenses issued by the division, with a total of 163,860 units. The division has found that listings per advertising platform vary from as many as 391,798 to as little as 4. Vacation rental owners may list their properties on multiple advertising platforms which causes overlapping and duplication in total advertisement numbers. There are some platforms which are subgroups of larger platforms, in addition to platforms that are compilations of advertisements found on other vacation rental websites. There are also some online platforms which create mirror ads on their connected family platforms. As defined in the bill, the subgroups, mirror, and compilation sites are all deemed advertising platforms. This presents complications in determining the total number of vacation rentals and anticipated division work load.

The bill preempts the regulation of advertising platforms to the division, but does not provide instructions on how advertising platforms should be regulated. The bill is unclear if the division would need to create a new license classification or online registration for advertising platforms to allow regulation and enforcement and does not grant the division with rulemaking authority. The bill does not provide terms for how often valid license compliance notices should be provided to advertising platforms by the division and it does not provide any enforcement guidelines or penalties for an advertising platform not complying with the reporting or advertisement removal requirements. The bill does not set terms for how long the records should be maintained by the advertising platforms and does not appropriate funds or new FTEs to the division.

If the legislative intent is to make the single, group and collective listing unit disclosure part of the division's readily accessible public information, statutory authority to require online submission of units lists for vacation rental licenses should be considered. Units lists submitted in an electronic format will integrate easier with DBPR's existing technology systems and will help facilitate compliance with the law.

OGC Division Counsel: The proposed legislative changes may result in additional workload for legal staff. The potential increase is indeterminate at this time.

Lines 196-199 allow the department to collect its attorney fees and costs, together with any cost of collection, if it's required to seek enforcement of a notice to cease and desist for a penalty pursuant to s. 120.569, F.S. Section 120.569 could be an incorrect reference to s. 120.69, F.S., which is the section allowing an agency to enforce an action in circuit court. This possibility is supported by s. 120.69(2), F.S., referencing a penalty. Otherwise, it is unclear what penalty is being referenced as the bill language does not specifically provide for imposing fines against advertising platforms, s. 120.569, F.S., does not specifically reference a penalty, and the existing language in ch. 509, F.S., only provides for fines against licensed and unlicensed public lodging and public food service establishments. Additionally, line 196 uses the term "department" while lines 186, 187, 188, and 193 use the term "division", making the terminology inconsistent.

Lines 121-126 require vacation rental owners or operators to display the rental's division license number, Florida sales tax number and tourist development tax account numbers. The language is unclear regarding whether this requirement is subject to the same display standard as the actual license (must be conspicuously displayed to the public inside the establishment) or a different display standard.

OGC Rules: No additional comments.

Division of Service Operations: The impact to the division is indeterminate at this time. The analysis indicates that there will be an increase in the number of vacation licenses issued but does not project an actual number. The Call Center will receive inquiries from applicants, licensees and the general public. The division requests one FTE Regulatory Specialist III for every 14,850 calls received by the department. If applicants are required to apply online, the impact on the license operations will be minimal.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW	

Issues/concerns/comments:	No additional comments.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Vacation Rentals

Name Cynthia Henderson

Job Title _____

Address 108 E. Jefferson St

Phone 850 559 0855

Street 108 E City FL State FL Zip 32301

Email cjhenderson@me.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla Prof. Vacation Managers Coalition

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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Duplicate

02/16/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

522

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Jess McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street

Phone 305.979.7110

Street

Miami

FL

33128

Email jess.mccarty@miamidade.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

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Copy/Date

THE FLORIDA SENATE

APPEARANCE RECORD

2/16/21

Meeting Date

522

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Rana Brown

Job Title Ronald L. Book, P.A.

Address 104 W Jefferson Street

Phone 850.224.3427

Street

Tallahassee

FL

32301

Email Rana@ribbookpa.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing City of Miami Beach

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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Duplicate

2/16/21

Meeting Date

**THE FLORIDA SENATE
APPEARANCE RECORD**

SB 522

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St

Phone 850-681-0024

Street
Tallahassee

FL

32301

Email:jorge@flapartners.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of Panama City Beach

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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2/16/21

Meeting Date

APPEARANCE RECORD

THE FLORIDA SENATE

SB 522

Bill Number (if applicable)

940098

Amendment Barcode (if applicable)

Topic Vacation Rentals

Name Jorge Chamizo

Job Title Attorney

Address 108 S Monroe St

Street

Tallahassee

FL

State

32301

Zip

Email jorge@flapartners.com

Phone 850-681-0024

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of Panama City Beach

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

2/16/2021

Meeting Date

SB 522

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Natalie Fausel

Job Title Anfield Consulting Group

Address 201 W. Park Ave. Ste 100

Phone 561-317-0889

Street Tallahassee

FL

32301

Email natalie@anfieldflorida.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Indian River County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

2/10/21

Bill Number (if applicable)

522

Topic

VACATION REQUESTS

Amendment Barcode (if applicable)

Name

ERIC POOLE

Job Title

Address

Street

100 S Monroe St,

City

State

Zip

33301

Phone

224.920

Email

epoole@fl-senate.com

Speaking:

☐ For

☐ Against

☐ Information

☒ Waive Speaking:

☐ In Support

☒ Against

(The Chair will read this information into the record.)

Representing

FL ASSOC. OF COUNTIES

Appearing at request of Chair:

☐ Yes

☒ No

Lobbyist registered with Legislature:

☒ Yes

☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 16 Feb 2021

Bill Number (if applicable) SB 522

Topic Vacation Rentals - Regulated Industries

Amendment Barcode (if applicable) _____

Name Diego Echeverri

Job Title Legislative Liaison

Address 200 W College Ave

City TLH State FL Zip _____

Phone _____

Email decheverri@calphy.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**THE FLORIDA SENATE**

2/16/2021

APPEARANCE RECORD

SB 522

Meeting DateBill Number (if applicable)Topic SB 522- Vacation RentalsAmendment Barcode (if applicable)Name Danielle ScogginsJob Title Vice President of Public PolicyAddress 200 S. Monroe StPhone 850-443-1942StreetTallahasseeFL32301Email danielles@floridarealtors.orgCityStateZip

Speaking:

☐

For

☐

Against

☐

Information

☒

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing The Florida Realtors AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/16/2021

SB 522

Meeting Date

Bill Number (if applicable)

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Tara Taggart

Job Title Legislative Policy Analyst

Address 301 S. Bronough St. #300

Phone 850-701-3603

Street

Tallahassee

FL

32302

Email ttaggart@flcities.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB522

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Phone

Street

City

State

Zip

Email

Speaking:

☐ For

☒ Against

☐ Information

Waive Speaking:

☐ In Support

☐ Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

☐ Yes

☐ No

Lobbyist registered with Legislature:

☒ Yes

☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 16 Feb 21

Bill Number (if applicable) 532

Topic Vacation Rentals

Amendment Barcode (if applicable)

Name Lino Maldonado

Job Title President

Address 200 Birdsong Creek Cove

Phone (850) 685-8325

Street Niceville City FL State 32578 Zip

Email Lino@Belhorne247.com

Speaking: ☒ For ☐ Against ☐ Information ☐ Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla Prof Vacation Rental Coalition

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Bill Number (if applicable) 5B 522

Topic Location Rentals

Amendment Barcode (if applicable) 940098

Name Andrew Ketchel

Job Title Consultant

Address 124 W. Jefferson Street

Phone 222-7675

City Tallahassee

State FL

Zip 32301

Email Andrew@ccfla.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Location Rentals Management Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**State of Florida
Office of the Attorney General
Informal Legal Opinion**

Number: INFORMAL
Date: October 22, 2013
Subject: Vacation Rental Operations -- Local Ordinances

Mr. Albert J. Hadeed
Flagler County Attorney
1769 East Moody Boulevard, Building 2
Bunnell, Florida 32110

Dear Mr. Hadeed:

Thank you for contacting this office for assistance in determining whether Flagler County may intercede and stop vacation rental operations, as defined in Chapter 509, Florida Statutes, in private homes that were zoned, prior to June 1, 2011, for single-family residential use. Due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood. You state that Flagler County has no regulations governing vacation rentals which predate the 2011 legislation.

In sum, absent the existence of a local ordinance on or before June 1, 2011, regulating the rental of vacation homes in Flagler County, section 509.032(7), Florida Statutes, preempts local regulation of lodging establishments and public food establishments to the state and precludes a local ordinance or regulation enacted after June 1, 2011, restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.

A number of county residents have argued that transient vacation rentals are a commercial activity which is a non-conforming use of a house constructed under a permit for a single-family residence and located in an area zoned for single-family residences. The county has considered this argument and concluded that a residential zoning category, in and of itself, is not sufficient to serve as a pre-existing prohibition of vacation rentals in private homes.

Section 509.032(7)(a), Florida Statutes, preempts the regulation of lodging establishments and public food establishments to the state. Subsection (b) of the statute states:

"A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011." [1] (e.s.)

A "vacation rental" is defined as "any unit or group of units in a condominium, cooperative, or time-share plan or any individual or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment." [2] (e.s.) Thus, the plain language of the statute recognizes that a single-family house or dwelling may be a "vacation rental" which is used as a transient public lodging establishment subject to regulation by the state. As this office has previously recognized, with the enactment of section 509.032(7)(b), Florida Statutes, the ability of a local government to regulate vacation rentals by enactment of an ordinance after June 1, 2011, has been preempted to the state. [3] While you have premised your question on the existence of a single-family zoning regulation in existence prior to June 1, 2011, you have also indicated that no county regulations of vacation rentals existed on that date.

This office agrees with the county's conclusion that a local zoning ordinance for single-family homes existing on or before June 1, 2011, that did not restrict the rental of such property as a vacation rental, cannot now be interpreted to do so. The clear language in section 509.032(7), Florida Statutes, prohibits any local regulation on or after June 1, 2011, based upon the use of a residence as a vacation rental.

Sincerely,

Lagran Saunders
Attorney General

ALS/tshr

[1] Section 509.032(7)(c), Fla. Stat., provides:

"Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation."

[2] Section 509.242(1)(c), Fla. Stat. See s. 509.013(4), Fla. Stat., defining "[p]ublic lodging establishment" for purposes of Ch. 509, Fla. Stat.:

"(4)(a) 'Public lodging establishment' includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

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."

[3] Informal Op. to Marino, dated August 3, 2012. Cf. City of Venice v. Gwynn, 76 So. 3d 401 (Fla. 2d DCA 2011), in which a city's code prohibited owners of single-family dwellings in residential neighborhoods from renting their property for short periods of times; the court affirmed the city's

administrative determination that owner's non-conforming use of property as a vacation rental violated city's ordinance regarding short-term rentals.



SENATOR MANNY DIAZ, JR.
36th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy Chair
Appropriations Subcommittee on
Education Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Commerce and Tourism
Rules

January 25, 2021

Honorable Senator Hutson
Chair
Committee on Regulated Hutson

Honorable Chair Hutson,

I respectfully request Senate Bill Number 522 Vacation Rentals be placed on the next committee agenda.

Sincerely appreciate your support.

A handwritten signature in blue ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: Booter Imhof, Staff Director
Susan Datres, Committee Administrative Assistant
Katherine Babcock, Legislative Assistant

REPLY TO:

- ☐ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- ☐ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
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: SPB 7028

INTRODUCER: Regulated Industries Committee

SUBJECT: OGSR/Data Processing Software

DATE: February 17, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	Imhof		RI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7028 amends s. 119.071(1)(f), F.S., to remove the scheduled repeal of a public records exemption for data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, F.S., and agency-produced data processing software that is sensitive.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, qualified trade secrets and sensitive information remain exempt from public disclosure.

The bill is effective October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁷

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁸
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.

²⁸ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,²⁹ and the right to recover damages for the misappropriation of a trade secret.³⁰ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³¹

Section 688.002(4), F.S., defines the term "trade secret" to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information

²⁹ Section 688.003, F.S.

³⁰ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³¹ See Section 688.008, F.S.

or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has “independent economic value,” rather than just be “of value,” as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt “trade secrets” as defined in s. 688.002(4), F.S., or include “trade secrets” as defined in s. 688.002(4), F.S., within the meaning of the term “proprietary confidential information” or “proprietary business information” when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.
- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.

- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.
- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.

- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³² In *Sepero v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³³

Trade Secrets Exemption for Data Processing Software

Section 119.071(1)(f), F.S., exempts from public records requirements in s. 119.07(1), F.S., data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret, as defined in s. 812.081, F.S., and agency-produced data processing software that is sensitive.³⁴

In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption in s. 119.07(1)(f), F.S., was also reenacted in 2016 to incorporate the new definition of “trade secret.”³⁵ This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.³⁶

Section 119.10(1), F.S., provides that any public officer who violates any provision of ch. 119, F.S., commits a noncriminal infraction punishable by fine not exceeding \$500. If the public

³² *Sepero v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³³ *Id.*

³⁴ Section 119.011(14), F.S., defines the term “sensitive” for the purposes of defining agency-produced software, to mean: ...only those portions of data processing software, including the specifications and documentation, which are used to:

- (a) Collect, process, store, and retrieve information that is exempt from s. 119.07(1), F.S.;
- (b) Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or
- (c) Control and direct access authorizations and security measures for automated systems.

³⁵ Chapter 2016-5, Laws of Fla.

³⁶ *Id.*

officer violated the provisions of s. 119.07(1), the person is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree.³⁷

Section 119.10(2), F.S., provides that any person who willfully and knowingly violates any of the provisions of this chapter commits a misdemeanor of the first degree.³⁸

Open Government Sunset Review Questionnaires

In September 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to several state agencies and to the Florida League of Cities and the Florida Association of Counties for transmittal to those associations' member-agencies. Twenty-three state and local agencies responded to the questionnaires, representing 15 state agencies, five city governments, one county government, and two school boards. Staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

The majority of responding agencies stated that they have data processing software licensing agreements in place that require the software to be kept confidential as a trade secret. The number of such agreements for an agency ranged from one licensing agreement to more than 4,000 agreements. Section 119.071, F.S., does not require a licensing agreement for the exemption to apply, but such an agreement may evidence the labeling of a trade secret as such or the trade secret owner's written notice to the agency that the information provided to the agency is a trade secret. As noted by the Department of Highway Safety and Motor Vehicles, most commercial off-the-shelf software is typically subject to a licensing agreement which restricts the duplication, copying, or other disclosure.³⁹

The questionnaire asked the agencies if it would be more appropriate for the public record exemption under review to use the definition of "trade secret" provided for in s. 688.002(4), F.S., as opposed to the definition in s. 812.081(1)(c), F.S. Of the agencies that responded to this question, 11 stated that the exemption should not be changed, three respondents recommended that the definitions should be revised to be identical or merged into a single definition, one respondent stated that either definition was appropriate, and one agency stated that the definition in s. 688.002(4), F.S., was the more appropriate definition. Eight respondents did not offer an opinion.

Advising that the exemption should continue to use the current definition in s. 812.081(1)(c), F.S., the Department of Correction (DOC) stated that changing the definition would "upend years of case law. The definition of a "trade secret" in section 812.081, F.S., has been referenced by Chapter 119 since the exemption was created in 1985." The DOC noted that such a change "would be detrimental to records custodians as their guidance would have to be altered. The elements for each test differ and adopting the elements in section 688.002(4), F.S., would require

³⁷ Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

³⁸ *Id.*

³⁹ See *Open Government Sunset Review Questionnaire* response from the Florida Department of Highway Safety and Motor Vehicles, dated Oct. 20, 2020, and on file with the Senate Committee on Regulated Industries.

a determination of “reasonableness” that is often hard to define and easy to litigate. Section 688.002(4), F.S., doesn’t encompass the same level of specificity as section 812.081, F.S., and this would create confusion for both custodians and the public.”⁴⁰

Several of the agencies also noted that the public records exemption in s. 815.04(3), F.S., relating to trade secret data, programs, and supporting documentation that is a trade secret, as defined in s. 812.081(1)(c), F.S., and held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device, is similar the public records exemption in s. 119.071(1)(f), F.S.

None of the agencies surveyed recommended that the exemption in s. 119.071(1)(f), F.S., should not be reenacted.

Only one respondent made a recommendation to amend the exemption that did not relate to the definition of the term trade secret in ss. 688.002(4) and 812.081(1)(c), F.S. The City of Clearwater recommended that s. 119.071(1)(f), F.S., should be reenacted and amended to "include language applicable to Remote Software Service Providers and/or "Cloud" provided software and services.”⁴¹

III. Effect of Proposed Changes:

The bill amends s. 119.071(1)(f), F.S., to remove the scheduled repeal of a public records exemption for data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, F.S., and agency-produced data processing software that is sensitive.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, qualified trade secrets and sensitive information remain exempt from public disclosure.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the

⁴⁰ See *Open Government Sunset Review Questionnaire* response from the Florida Department of Corrections, dated Oct. 22, 2020, and on file with the Senate Committee on Regulated Industries.

⁴¹ See *Open Government Sunset Review Questionnaire* response from the City of Clearwater, dated Oct. 22, 2020, and on file with the Senate Committee on Regulated Industries.

public records requirements. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 s. 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Regulated Industries

580-01515-21

20217028pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., relating to an exemption from public records requirements for certain data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret and agency-produced data processing software that is sensitive; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (f) of subsection (1) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software that is sensitive are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive does not prohibit an agency head from sharing or exchanging such software with another public agency. ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment~~

Page 1 of 2

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

580-01515-21

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~~by the Legislature.~~

Section 2. This act shall take effect October 1, 2021.

Page 2 of 2

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

**The House Oversight, Transparency & Public Management Subcommittee
The Senate Innovation, Industry, and Technology Committee
September 16, 2020**

**Open Government Sunset Review Questionnaire
(Data processing software obtained by an agency)**

PLEASE RETURN THIS QUESTIONNAIRE VIA EMAIL BY OCTOBER 23, 2020, TO BOTH:

**Patrick L. “Booter” Imhof
Staff Director
Senate Committee on Innovation,
Industry, and Technology
Imhof.Booter@flsenate.gov
Phone: (850) 487-5957**

**Chris Villa,
Attorney
House Oversight, Transparency & Public
Management Subcommittee
Chris.Villa@myfloridahouse.gov
Phone: (850) 717-4890**

Section 119.071(1)(f), F.S., provides a public record exemption for data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, F.S. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption was reenacted to include the new definition of “trade secret” and is subject to the Open Government Sunset Review Act (s. 119.15, F.S.).

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 119.071(1)(f) AND 812.081, F.S., ARE INCLUDED FOR YOUR CONVENIENCE.

Agency, Organization, or Entity Completing this Questionnaire: City of Clearwater

Name of Person Completing the Questionnaire: Dan Mayer

Title: IT Director

Telephone Number: (727)562-4662

E-mail Address: daniel.mayer@myclearwater.com

Date that this Questionnaire was Completed: 10/22/2020

Public Record Exemption under Review

Section 119.071(1)(f), F.S., provides a public record exemption for data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, F.S. In 2016, the definition of “trade secret” in section 812.081, F.S., was expanded to include financial information.

1. Does your agency have a data processing software licensing agreement in place that requires the software to be kept confidential because of trade secret? If “yes:” **Yes**
 - a. How many agreements do you currently have in place? **20 - 30**
 - b. What specific records, or part of a record, of the data processing software is protected per the agreement? **The software source code and compiled application.**
2. Whom does the exemption uniquely affect, as opposed to the general public?
The software developer and industry competitors.
3. What is the identifiable public purpose or goal of the exemption?
Intellectual property protection and software security.
4. Can the protected information contained in the records be readily obtained by alternative means? If so, how?
No
5. Has your agency received a public record request for any such trade secret information? If “yes:”
No
 - a. Please describe the types of entities or persons requesting such information and how many requests were received each year since October 1, 2016.
 - b. Was the information released? Please explain.
6. The exemption under review provides that the protected software may be shared or exchanged with another public agency. Has the agency shared or exchanged protected software with another public agency? If yes: **No**
 - a. Under what circumstances did the agency share the exempt information?
 - b. Does the agency ever need to share the exempt information with any person or entity not specified in statute? If so, who?

7. The public record exemption under review defines “trade secret” in accordance with Florida’s criminal statutes. However, Florida’s Uniform Trade Secrets Act also defines “trade secret” in s. 688.002(4), F.S. Would it be more appropriate for the public record exemption under review to use the definition of “trade secret” provided for in the Uniform Trade Secrets Act as opposed to the definition of “trade secret” provided for in Florida’s criminal statutes? Please explain. **Unsure**
8. Has the agency had any difficulties interpreting or applying the exemption? If “yes,” please explain. **No**
9. Is there any case law interpreting the exemption? If “yes,” please explain and provide the appropriate case citations. **Unknown**
10. Are there any pending judicial or administrative disputes or actions related to the exemption? If “yes,” please explain and provide the appropriate judicial or administrative citations. **No**
11. Does any other state or federal law provide a public record exemption for the information protected by the exemption? If "yes:" **Unknown**
 - a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.
 - b. Please explain which exemption the agency relies upon when responding to a public record request that would include such information.
 - c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.
12. Section 119.10, F.S., provides non-criminal and criminal penalties for persons who violate any provision in ch. 119, F.S. To the best of your knowledge, has any person been arrested or charged with a violation of the exemption in s. 119.071, F.S., in relation to data processing software in the custody of the agency and subject to the exemption. If "yes:" **No**
 - a. How many such persons have been arrested or charged?
 - b. What was the disposition of the case?
 - c. Was data processing software in the custody of the agency and subject to the exemption destroyed or disclosed to the public.

13. Does your agency recommend that the Legislature repeal the public record exemption under review, or reenact the public record exemption?

☐ repeal the exemption

☐ reenact the exemption 'as is'

☒ X__ reenact the exemption with the following changes:

"include language applicable to Remote Software Service Providers and/or "Cloud" provided software and services."

14. Please provide a brief explanation of your recommendation in question 13.

It has provided an appropriate safeguard and guidance for contract development.

15. Please provide any additional comments regarding the public record exemption under review.

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software that is sensitive are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive does not prohibit an agency head from sharing or exchanging such software with another public agency. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

**The House Oversight, Transparency & Public Management Subcommittee
The Senate Innovation, Industry, and Technology Committee
September 16, 2020**

**Open Government Sunset Review Questionnaire
(Data processing software obtained by an agency)**

PLEASE RETURN THIS QUESTIONNAIRE VIA EMAIL BY OCTOBER 23, 2020, TO BOTH:

**Patrick L. "Booter" Imhof
Staff Director
Senate Committee on Innovation,
Industry, and Technology
Imhof.Booter@flsenate.gov
Phone: (850) 487-5957**

**Chris Villa,
Attorney
House Oversight, Transparency & Public
Management Subcommittee
Chris.Villa@myfloridahouse.gov
Phone: (850) 717-4890**

Section 119.071(1)(f), F.S., provides a public record exemption for data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, F.S. In 2016, the definition of "trade secret" in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption was reenacted to include the new definition of "trade secret" and is subject to the Open Government Sunset Review Act (s. 119.15, F.S.).

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 119.071(1)(f) AND 812.081, F.S., ARE INCLUDED FOR YOUR CONVENIENCE.

Agency, Organization, or Entity Completing this Questionnaire: Department of Children and Families

**Name of Person Completing the Questionnaire: John M. Jackson
Title: Deputy General Counsel
Telephone Number: 850-488-2381
E-mail Address: John.Jackson@myflfamilies.com**

Date that this Questionnaire was Completed: October 12, 2020

Public Record Exemption under Review

Section 119.071(1)(f), F.S., provides a public record exemption for data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, F.S. In 2016, the definition of “trade secret” in section 812.081, F.S., was expanded to include financial information.

1. Does your agency have a data processing software licensing agreement in place that requires the software to be kept confidential because of trade secret? If “yes:”

Yes

- a. How many agreements do you currently have in place?

One

- b. What specific records, or part of a record, of the data processing software is protected per the agreement?

DCF has one contract with licensing language that recognizes that software code that was created by the vendor prior to our engagement and brought in to be used as part of a system created for DCF, should be considered confidential. Although not specifically called Trade Secret in the contract and licensing statements, language contemplated for our contract renewal with the vendor states that if we contract with another vendor for continued support at the end of this contract, we will be required to have the other vendor sign a non-disclosure agreement with respect to the pre-existing work products before making them available for support and enhancements. Language also states the pre-existing software code should be considered confidential and not made available publicly.

So, only the pieces of the readable software code that was previously created by the vendor and used to help build the DCF is protected.

2. Whom does the exemption uniquely affect, as opposed to the general public?

Only DCF as we'll have to require any future vendor to sign a non-disclosure agreement before turning over the readable software code to them for support and enhancement.

3. What is the identifiable public purpose or goal of the exemption?

Only to protect the proprietary nature of pre-existing work products.

4. Can the protected information contained in the records be readily obtained by alternative means? If so, how?

No. The functionality that the software code performs can probably be easily recreated.

5. Has your agency received a public record request for any such trade secret information? If “yes:”

No.

- a. Please describe the types of entities or persons requesting such information and how many requests were received each year since October 1, 2016.
- b. Was the information released? Please explain.
6. The exemption under review provides that the protected software may be shared or exchanged with another public agency. Has the agency shared or exchanged protected software with another public agency? If yes:

No.

- a. Under what circumstances did the agency share the exempt information?
- b. Does the agency ever need to share the exempt information with any person or entity not specified in statute? If so, who?
7. The public record exemption under review defines “trade secret” in accordance with Florida’s criminal statutes. However, Florida’s Uniform Trade Secrets Act also defines “trade secret” in s. 688.002(4), F.S. Would it be more appropriate for the public record exemption under review to use the definition of “trade secret” provided for in the Uniform Trade Secrets Act as opposed to the definition of “trade secret” provided for in Florida’s criminal statutes? Please explain.

The Department has no preference.

8. Has the agency had any difficulties interpreting or applying the exemption? If “yes,” please explain.

No.

9. Is there any case law interpreting the exemption? If “yes,” please explain and provide the appropriate case citations.

-*Seapro v. FDEP*, 839 So. 2d 787 (Fla. 1st DCA 2003) (Exemption should be read to

exempt from disclosure as public records all trade secrets as defined by section 812.081(1) (c), F.S.).

-James, Hoyer, Newcomer, Smiljanich, & Yanchunis, P.A. v. Rodale, Inc., 41 So.2d 386 (Fla. 1st DCA 2010) (Claimed trade secrets must actually constitute trade secrets as defined by law.)

10. Are there any pending judicial or administrative disputes or actions related to the exemption? If "yes," please explain and provide the appropriate judicial or administrative citations.

No.

11. Does any other state or federal law provide a public record exemption for the information protected by the exemption? If "yes:"

Possibly.

- a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.

-Section 815.04(3) (protects data, programs or supporting documentation defined as trade secret by 812.081);

- b. Please explain which exemption the agency relies upon when responding to a public record request that would include such information.

The Department more often relies on the exemption in 119.071(1)(f).

- c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.

No. The exemption in 119.071(1)(d) is broader than 815.04(3).

12. Section 119.10, F.S., provides non-criminal and criminal penalties for persons who violate any provision in ch. 119, F.S. To the best of your knowledge, has any person been arrested or charged with a violation of the exemption in s. 119.071, F.S., in relation to data processing software in the custody of the agency and subject to the exemption. If "yes:"

No.

- a. How many such persons have been arrested or charged?

- b. What was the disposition of the case?
- c. Was data processing software in the custody of the agency and subject to the exemption destroyed or disclosed to the public.
13. Does your agency recommend that the Legislature repeal the public record exemption under review, or reenact the public record exemption?
- _____ repeal the exemption
- _____ reenact the exemption 'as is'
- _____ reenact the exemption with the following changes:

The Department has no preference regarding whether or not the exemption should be repealed.

14. Please provide a brief explanation of your recommendation in question 13.

There would be no impact on the Department whether the exemption is repealed or not.

15. Please provide any additional comments regarding the public record exemption under review.

None.

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software that is sensitive are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive does not prohibit an agency head from sharing or exchanging such software with another public agency. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

**The House Oversight, Transparency & Public Management Subcommittee
The Senate Innovation, Industry, and Technology Committee
September 16, 2020**

**Open Government Sunset Review Questionnaire
(Data processing software obtained by an agency)**

PLEASE RETURN THIS QUESTIONNAIRE VIA EMAIL BY OCTOBER 23, 2020, TO BOTH:

**Patrick L. “Booter” Imhof
Staff Director
Senate Committee on Innovation,
Industry, and Technology
Imhof.Booter@flsenate.gov
Phone: (850) 487-5957**

**Chris Villa,
Attorney
House Oversight, Transparency & Public
Management Subcommittee
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Section 119.071(1)(f), F.S., provides a public record exemption for data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, F.S. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption was reenacted to include the new definition of “trade secret” and is subject to the Open Government Sunset Review Act (s. 119.15, F.S.).

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 119.071(1)(f) AND 812.081, F.S., ARE INCLUDED FOR YOUR CONVENIENCE.

Agency, Organization, or Entity Completing this Questionnaire: [Department of Highway Safety & Motor Vehicles](#)

Name of Person Completing the Questionnaire: [Joseph Gillespie](#)

Title: [Chief of Records Policy & Administration, Office of General Counsel](#)

Telephone Number: [\(850\) 617-3101](#)

E-mail Address: joegillespie@flhsmv.gov

Date that this Questionnaire was Completed: [October 20, 2020](#)

Public Record Exemption under Review

Section 119.071(1)(f), F.S., provides a public record exemption for data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, F.S. In 2016, the definition of “trade secret” in section 812.081, F.S., was expanded to include financial information.

1. Does your agency have a data processing software licensing agreement in place that requires the software to be kept confidential because of trade secret? If “yes:”

Yes.

- a. How many agreements do you currently have in place?

This is indeterminate, as most commercial-off-the-shelf (COTS) software used by the Department is subject to licensing agreements which restrict the duplication, copying, or other disclosure of the software. These comprise myriad licenses across a multitude of platforms, including such ubiquitous software as Microsoft Office 365 and Adobe products.

- b. What specific records, or part of a record, of the data processing software is protected per the agreement?

Licensing restrictions vary by software product but typically include restrictions to protect source code, object code, supporting documentation, or training materials.

2. Whom does the exemption uniquely affect, as opposed to the general public?

Section 119.071(1)(f), Fla. Stat., exempts from public records requirements both:

- “Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret”; and
- “Agency-produced data processing software that is sensitive.”

The first aspect of the exemption protects the proprietary interests of software developers in their intellectual property. The second aspect protects the security and integrity of data maintained by an agency using its agency-produced software.

3. What is the identifiable public purpose or goal of the exemption?

The first aspect (software under licensing agreements) of the exemption allows an agency to honor licensing agreements of software obtained by the agency. The second aspect (agency-produced software) allows an agency to protect the security and integrity of data maintained by the agency by not revealing application and security design within source code which could lead to security vulnerabilities of its agency-produced software.

4. Can the protected information contained in the records be readily obtained by alternative means? If so, how?

No. Software code, documentation, and related materials revealing information about the software are proprietary and the intellectual property of the software developers, who are the exclusive source where that information may be obtained.

5. Has your agency received a public record request for any such trade secret information? If “yes:”

None known.

- a. Please describe the types of entities or persons requesting such information and how many requests were received each year since October 1, 2016.

N/A

- b. Was the information released? Please explain.

N/A

6. The exemption under review provides that the protected software may be shared or exchanged with another public agency. Has the agency shared or exchanged protected software with another public agency? If yes:

No.

- a. Under what circumstances did the agency share the exempt information?

N/A.

- b. Does the agency ever need to share the exempt information with any person or entity not specified in statute? If so, who?

N/A.

7. The public record exemption under review defines “trade secret” in accordance with Florida’s criminal statutes. However, Florida’s Uniform Trade Secrets Act also defines

“trade secret” in s. 688.002(4), F.S. Would it be more appropriate for the public record exemption under review to use the definition of “trade secret” provided for in the Uniform Trade Secrets Act as opposed to the definition of “trade secret” provided for in Florida’s criminal statutes? Please explain.

The definition of “trade secret” in § 812.081(1)(c), Fla. Stat., is more complex than the definition in § 688.002(4), Fla. Stat. Both terms have a subjective aspect and may require extensive knowledge of the business claiming the trade secret to validate the claim.

The 2016 addition of “financial information” to the definition of “trade secret” in § 812.081(1)(c), Fla. Stat., makes clear the term is more extensive than secrets relating to methods of producing a commodity or contractual service. By shielding commercial information, lists of suppliers, lists of customers, and a business’ level of skill, for example, it appears § 812.081(1)(c), Fla. Stat., protects proprietary secrets relating more generally to a business’ operations.

By comparison, the definition in § 688.002(4), Fla. Stat., is generally less clear in setting out its parameters. Further, § 688.002(4), Fla. Stat., only protects trade secrets that have “independent economic value,” rather than just being “of value.” *Managed Care of North America, Inc. v. Florida Healthy Kids Corp.*, 268 So. 3d 856, 861 (Fla. 1st DCA 2019). Application of this definition could prove more difficult in practice.

8. Has the agency had any difficulties interpreting or applying the exemption? If “yes,” please explain.

No.

9. Is there any case law interpreting the exemption? If “yes,” please explain and provide the appropriate case citations.

No.

10. Are there any pending judicial or administrative disputes or actions related to the exemption? If “yes,” please explain and provide the appropriate judicial or administrative citations.

No.

11. Does any other state or federal law provide a public record exemption for the information protected by the exemption? If “yes:”

No.

- a. Please provide the specific state or federal citation for each exemption and specify

the types of information each state or federal law protects.

N/A

- b. Please explain which exemption the agency relies upon when responding to a public record request that would include such information.

N/A

- c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.

The exemptions in §§ 119.071(1)(f) and 815.04(3), Fla. Stat., comprise related protections for the software, data, and supporting documentation of agency computer systems. Both exemptions incorporate the definition of a "trade secret" from § 812.081(1)(c), Fla. Stat. The exemptions could be merged into a single exemption that holistically expresses an integrated policy for protection of agency computer systems, including respect for proprietary interests in intellectual property and safeguard of the integrity of data and network security of agency computer systems.

12. Section 119.10, F.S., provides non-criminal and criminal penalties for persons who violate any provision in ch. 119, F.S. To the best of your knowledge, has any person been arrested or charged with a violation of the exemption in s. 119.071, F.S., in relation to data processing software in the custody of the agency and subject to the exemption. If "yes:"

No.

- a. How many such persons have been arrested or charged?

N/A

- b. What was the disposition of the case?

N/A

- c. Was data processing software in the custody of the agency and subject to the exemption destroyed or disclosed to the public.

N/A

13. Does your agency recommend that the Legislature repeal the public record exemption under review, or reenact the public record exemption?
_____ repeal the exemption

reenact the exemption ‘as is’

 X reenact the exemption with the following changes:

- Expand the exemption to explicitly exempt login credentials (e.g., usernames and passwords) for agency computer systems.

14. Please provide a brief explanation of your recommendation in question 13.

It is critical that an agency be legally permitted to honor the licensing agreements for data processing software obtained by the agency. If an agency were unable to comply with the terms of those licensing agreements, it would either constrain the agency’s options of which software could be obtained or would subject the agency to liability for failure to honor those terms.

To safeguard agency-produced software that is sensitive and mitigate the exploitation of security vulnerabilities in computer systems, it is critical to shield the disclosure of the software, including the source code, object code, and supporting documentation.

Although agencies routinely interpret and apply existing exemptions as shielding the disclosure of login credentials (e.g., usernames and passwords) for agency computer systems, more explicit protection for these credentials would obviate any potential an agency could be compelled to release them.

15. Please provide any additional comments regarding the public record exemption under review.

N/A

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software that is sensitive are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive does not prohibit an agency head from sharing or exchanging such software with another public agency. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

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 Committee Code Not Found

BILL: SPB 7022

INTRODUCER: Committee on Regulated Industries

SUBJECT: OGSR/Proprietary Confidential Business Information

DATE: February 17, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sharon	Imhof		RI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7022 amends s. 365.174, F.S., to save from repeal the public records exemption for proprietary confidential business information submitted by voice communications services providers (providers) to the E911 Board, the Division of Telecommunications (division) within the Department of Management Services (DMS), or the Department of Revenue (DOR) as an agent of the E911 Board.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill removes the repeal language.

The bill takes effect on October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁷

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁸
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.

²⁸ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,²⁹ and the right to recover damages for the misappropriation of a trade secret.³⁰ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³¹

Section 688.002(4), F.S., defines the term "trade secret" to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt "trade secrets" as defined in

²⁹ Section 688.003, F.S.

³⁰ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³¹ See Section 688.008, F.S.

s. 688.002(4), F.S., or include “trade secrets” as defined in s. 688.002(4), F.S., within the meaning of the term “proprietary confidential information” or “proprietary business information” when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.
- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.
- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.

- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.
- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.
- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³² In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³³

Proprietary Confidential Business Information and Trade Secrets

Under s. 365.174(1), F.S., proprietary confidential business information submitted by a voice communications services³⁴ provider³⁵ includes:

- Customer lists;
- Customer numbers;
- Individual or aggregate customer data by location;
- Usage and capacity data;
- Network facilities used to serve subscribers;
- Technology descriptions;
- Technical information, or trade secrets, including trade secrets as defined in s. 812.081; and
- Actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or by a provider's employees, directors, officers, or agents.

“Trade secrets,” as defined in s. 812.081(1)(c), F.S., means information, the owner of which has taken measures to prevent such information from becoming available to persons other than those that the owner has intended to have access for a limited purpose. Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or an opportunity to obtain an advantage over those that do not have that information.³⁶

Section 812.081(1)(c), F.S., states that “trade secrets” include “any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.”

In 2016, the term “trade secret” was expanded to include “financial information.”³⁷ Accordingly, s. 365.174, F.S., was revised to incorporate the expanded definition.³⁸ As a result of this

³² *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³³ *Id.*

³⁴ “Voice communication services” is defined as two-way voice service through the use of any technology including voice-over Internet protocol service. See s. 365.172(3)(cc), F.S.

³⁵ “Voice communications services providers” is defined as “any person or entity providing voice communications services except for a resale supplier. See s. 365.172(3)(dd), F.S.

³⁶ Section 812.081(1)(c), F.S.

³⁷ Ch. 2016-5, Laws of Fla.

³⁸ Ch. 2016-6, s. 5, Laws of Fla.

expansion, s. 365.174, F.S. was made subject to repeal on October 2, 2021, unless saved through reenactment by the Legislature.³⁹

General Overview of E911 Provisions within Chapter 365

The Emergency Communications Number E911 Act (the act), was established to create a statewide emergency telecommunications number system, providing users of voice communications service rapid and direct access to public safety and emergency agencies.⁴⁰ The Communications Number E911 System Fund (the fund),⁴¹ reimburses counties and wireless providers for certain costs incurred in complying with the act.⁴² The fund is administered by the E911 Board (board).⁴³ The fund is comprised of fees levied on subscribers pursuant to the E911 Fee⁴⁴ and the Prepaid Wireless E911 Fee.⁴⁵

Providers must deliver the collected E911 fees to the E911 Board within 60 days of billing subscribers, along with a monthly report that includes data as to the number of subscribers within each county.⁴⁶ This section expressly makes the information provided in the report exempt from public records pursuant to s. 365.174, F.S.⁴⁷ The fee must then be paid by the board into the State Treasury and accounted for in the fund, on a monthly basis.⁴⁸

As to the Prepaid Wireless E911 Fee, the provider collects the amount of the fee from the customers on each transaction performed within the state.⁴⁹ The provider must then remit the fees collected in the previous month along with a fee return to the Department of Revenue (DOR).⁵⁰ The DOR then transfers the fees to the fund on a monthly basis.⁵¹

Both the E911 Fee report and the return filed for the Prepaid Wireless E911 Fees contain information considered to be proprietary confidential business information, falling within the exemption in s. 365.174, F.S.⁵² According to CTIA, the trade association for the wireless communications industry:

The E911 fee submission reports to the E911 Board contain E911 fee collections from customers separated by local county jurisdiction, which is “aggregate customer data by location,” and financial data from which aggregate customer data by location can be derived. Prepaid wireless E911 fee collections may contain vendor specific information. In addition, cost and technical

³⁹ *Id.*

⁴⁰ Section 365.172, F.S.

⁴¹ Section 365.173, F.S.

⁴² Section 365.172(2)(b), F.S.

⁴³ Section 365.172(2)(d) F.S. The E911 Board is overseen by the Division of Telecommunications within DMS.

⁴⁴ Section 365.172(8), F.S.

⁴⁵ Section 365.172(9), F.S.

⁴⁶ Section 365.172(8)(e), F.S.

⁴⁷ *Id.*

⁴⁸ Section 365.173(1)(a), F.S.

⁴⁹ Section 365.172(9)(c), F.S.

⁵⁰ Section 365.172(9)(g), F.S.

⁵¹ Section 365.173(1)(b), F.S.

⁵² Section 365.172(8)(e), F.S.

information may have been submitted by one or more Members in support of affidavits seeking reimbursement from the E911 Board for implementation of E911 service.⁵³

CTIA explains that the information remitted is internal and cannot be obtained by any other means.⁵⁴ They assert that the information submitted is competitively sensitive and disclosure could result in harm to the providers.⁵⁵

Moreover, Florida Internet and Television contends that because the information remitted includes the total number of subscribers by county and the amount of fees paid, it is considered sensitive proprietary information that reflects market share data for the entire telecommunications industry.⁵⁶ They also assert that disclosure of this information in such a competitive market could result in economic harm.⁵⁷

III. Effect of Proposed Changes:

The bill retains the exemption for proprietary confidential business information submitted by voice communications services providers to the E911 Board, the division, or the DOR as an agent of the board by removing the repeal date of October 2, 2021 in current law.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

⁵³ See Response by CTIA to Open Government Sunset Review Questionnaire (Oct. 8, 2020) (on file with the Senate Committee on Regulated Industries).

⁵⁴ *Id.*

⁵⁵ See Response by ATT to Open Government Sunset Review Questionnaire (Sep. 29, 2020) (on file with the Senate Committee on Regulated Industries).

⁵⁶ See Supplemental Response by Florida Internet and Television to Open Government Sunset Review Questionnaire (Oct. 14, 2020) (on file with the Senate Committee on Regulated Industries).

⁵⁷ *Id.*

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 s. 365.174 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Regulated Industries

580-01519-21

20217022pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 365.174, F.S., which provides an exemption from public records requirements for proprietary confidential business information submitted by a voice communications services provider to the E911 Board, the Division of Telecommunications within the Department of Management Services, or the Department of Revenue; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 365.174, Florida Statutes, is amended to read:

365.174 Proprietary confidential business information.—

(1) (a) All proprietary confidential business information submitted by a provider to the board or the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Statistical abstracts of information collected by the board or the office may be released or published, but only in a manner that does not identify or allow identification of subscribers or their service numbers or of revenues attributable to any provider.

(2) (a) All proprietary confidential business information submitted by a provider to the Department of Revenue, as an agent of the board, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

580-01519-21

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(b) The Department of Revenue may provide information relative to s. 365.172(9) to the Secretary of Management Services, or his or her authorized agent, or to the E911 Board established in s. 365.172(5) for use in the conduct of the official business of the Department of Management Services or the E911 Board.

(3) As used in this section, the term "proprietary confidential business information" means customer lists, customer numbers, individual or aggregate customer data by location, usage and capacity data, network facilities used to serve subscribers, technology descriptions, technical information, or trade secrets, including trade secrets as defined in s. 812.081, and the actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or by a provider's employees, directors, officers, or agents.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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

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: SPB 7032

INTRODUCER: Regulated Industries Committee

SUBJECT: OGSR/Prescription Drug Purchase Lists

DATE: February 17, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kraemer	Imhof		RI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7032 amends s. 499.0121, F.S., to remove the scheduled repeal of a public records exemption for a trade secret related to prescription drug purchase lists submitted to the Department of Business and Professional Regulation (DBPR) by certain wholesale distributors of prescription drugs in Florida.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, qualified trade secrets remain exempt from public disclosure.

The bill is effective October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁷

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁸
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.

²⁸ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,²⁹ and the right to recover damages for the misappropriation of a trade secret.³⁰ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³¹

Section 688.002(4), F.S., defines the term "trade secret" to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of

²⁹ Section 688.003, F.S.

³⁰ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³¹ See Section 688.008, F.S.

advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has “independent economic value,” rather than just be “of value,” as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt “trade secrets” as defined in s. 688.002(4), F.S., or include “trade secrets” as defined in s. 688.002(4), F.S., within the meaning of the term “proprietary confidential information” or “proprietary business information” when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers’ Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.

- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.
- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.

- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.
- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³² In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³³

Open Government Sunset Review Questionnaires

In September 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to the Department of Business and Professional Regulation, Division of Drugs, Devices, and Cosmetics (DDC), and to the Pharmaceutical Research and Manufacturers of America (PhRMA) for consideration. Both parties responded to the questionnaires, and staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

According to the DDC, prescription drug purchase lists are a key element in protecting the prescription drug supply, as part of verifying only authorized parties supply prescription drugs in Florida, and only authentic, and not counterfeit, prescription drugs are supplied. These lists allow verification by DDC that the listed suppliers are authorized to sell prescription drugs in the United States and are properly registered as manufacturers with the Federal Food and Drug Administration, or with the DDC as wholesalers.³⁴

The DDC notes that in-person inspections of the business records of each prescription drug wholesale distributor would be a significant cost to the state, and for that reason, continued submission of the purchase lists with trade secret protection is preferable.³⁵

³² *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³³ *Id.*

³⁴ See Response by the DDC to Open Government Sunset Review Questionnaire (Sep. 25, 2020) (on file with the Senate Committee on Regulated Industries).

³⁵ *Id.*

According to a trade association for pharmaceutical and biotechnology companies and manufacturers, while manufacturers are not required to provide prescription drug purchase lists, the disclosure of trade secret information, i.e., the lists, is also prohibited by federal constitutional and recent statutory law.³⁶ Further, the trade secret exemption in s. 499.0121(7), F.S. helps “to ensure that the State’s public records statutes do not conflict with federal statutory law,” and “are better safeguards from a public policy perspective because they provide both manufacturers and the State with more certainty about what information may be subject to public disclosure.”³⁷

The questionnaire asked if the exemption should be repealed or merged with other exemptions, and neither respondent favored such action, as the various exemptions in ch. 499, F.S., do not have overlapping subject matter. The DDC recommended reenactment of the exemption as a fair protection of business interest and the public’s right to know.³⁸ The DDC noted drug purchase lists are a powerful and cost-effective tool for regulation of prescription drugs in Florida.³⁹ PhRMA suggested it would be preferable to adopt a broad exemption covering all confidential and proprietary business information held by the state, but that if such comprehensive changes are not made, the exemption should be reenacted.⁴⁰

Trade Secrets

For purposes of the exemption in s. 499.0121, F.S., the term “trade secrets,” as defined in s. 812.081(1)(c), F.S., means information for which an owner “takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes.” Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.⁴¹

Under Section 812.081(1)(c), F.S., the term “trade secret” includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

³⁶ See Response by Pharmaceutical Research and Manufacturers of America (PhRMA) to Open Government Sunset Review Questionnaire (Nov. 12, 2020) (on file with the Senate Committee on Regulated Industries). See also *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), and the Defend Trade Secrets Act, 18 U.S.C. s. 1836 *et seq.*, enacted in 2016, available at [18 USC 1836 - Civil proceedings \(govregs.com\)](https://www.govregs.com/18-usc-1836-civil-proceedings) (last visited Feb. 11, 2021).

³⁷ *Id.*

³⁸ See Response by the DDC to Open Government Sunset Review Questionnaire, p. 5, (Sep. 25, 2020) (on file with the Senate Committee on Regulated Industries).

³⁹ *Id.*

⁴⁰ See Response by Pharmaceutical Research and Manufacturers of America (PhRMA) to Open Government Sunset Review Questionnaire, at pp. 4-5, (Nov. 12, 2020) (on file with the Senate Committee on Regulated Industries).

⁴¹ Section 812.081(1)(c), F.S.

In 2016, when the term “trade secret” was expanded to include the term “financial information,”⁴² s. 499.0121, F.S., was revised to incorporate that expanded meaning, and made subject to repeal on October 2, 2021 unless saved through reenactment by the Legislature.⁴³

III. Effect of Proposed Changes:

The bill reenacts the exemption for qualified trade secrets from public disclosure in s. 499.0121, F.S., for a trade secret contained in prescription drug purchase lists required to be submitted annually by certain wholesale distributors of prescription drugs to the DBPR pursuant to s. 499.0121(7)(a), F.S. Such purchase lists must be submitted by all wholesale distributors, other than manufacturers.⁴⁴ The list must identify all wholesale distributors and manufacturers from whom the wholesale distributor purchases prescription drugs.⁴⁵

The bill reenacts the exemption by removing the repeal date of October 2, 2021 in current law.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

⁴² Ch. 2016-5, Laws of Fla.

⁴³ See Ch. 2016-6, s. 11, Laws of Fla.

⁴⁴ Under s. 499.003(49), F.S., the term “wholesale distributor” means “a person, other than a manufacturer, a manufacturer’s co-licensed partner, a third-party logistics provider, or a repackager, who is engaged in wholesale distribution. The term “wholesale distribution” means the “distribution of a prescription drug to a person other than a consumer or patient, or the receipt of a prescription drug by a person other than the consumer or patient,” but does not include numerous exceptions described in ss. 499.003(48)(a) through (x), F.S.

⁴⁵ Section 499.0121(7)(a), F.S.

The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 s. 499.0121 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Regulated Industries

580-01146-21

20217032pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 499.0121, F.S., which provides an exemption from public records requirements for trade secrets contained in certain prescription drug purchase lists submitted to the Department of Business and Professional Regulation; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (7) 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.

(7) PRESCRIPTION DRUG PURCHASE LIST.—

(a) Each wholesale distributor, except for a manufacturer, shall annually provide the department with a written list of all wholesale distributors and manufacturers from whom the wholesale distributor purchases prescription drugs. A wholesale distributor, except a manufacturer, shall notify the department not later than 10 days after any change to either list.

(b) Such portions of the information required pursuant to

Page 1 of 2

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

580-01146-21

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this subsection which are a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information is required to be maintained under s. 499.051. ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2021.

Page 2 of 2

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

**The Senate Innovation, Industry, and Technology Committee
September 3, 2020**

**Open Government Sunset Review Questionnaire
(Information held by the Department of Business and Professional Regulation)**

PLEASE RETURN THIS QUESTIONNAIRE BY OCTOBER 2, 2020, TO:

**Patrick L. "Booter" Imhof
Staff Director
Committee on Innovation, Industry, and
Technology
Imhof.Booter@flsenate.gov
Phone: (850) 487-5957**

Section 499.0121(7)(b), F.S., provides a public records exemption for trade secrets (as defined in s. 812.081, F.S.) contained in those portions of the written list provided to the Florida Department of Business and Professional Regulation (DBPR) of all wholesale distributors and manufacturers from whom the wholesale distributor purchases prescription drugs. The information that constitutes a trade secret as defined in s. 812.081, F.S., must be maintained as confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution as required under s. 499.051, F.S. In 2016, the Legislature amended this paragraph to be subject to the Open Government Sunset Review Act.

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the provisions of the Open Government Sunset Review Act (s. 119.15, F.S.).

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 499.0121(7) AND 812.081 FLORIDA STATUTES, ARE INCLUDED FOR YOUR CONVENIENCE, WITH THE EXEMPTION PROVISION SHOWN IN BOLD TYPE.

Agency or Organization Completing this Questionnaire: Department of Business and Professional Regulation, Division of Drugs, Devices, and Cosmetics (DDC)

Name of Person Completing the Questionnaire: Renee Alsobrook

Title: Chief of Compliance and Enforcement, DDC

Telephone Number: 850.717.1804

E-mail Address: reene.alsobrook@myfloridalicense.com

Date that this Questionnaire was Completed: 09.25.2020

1. What portions of the written lists provided to the department are considered to be trade secrets exempted under this provision?

The Division of Drugs, Devices, and Cosmetics (DDC) treats as trade secret the portion of the list identified by the wholesale distributor as trade secret. Subsection 499.0121(7), Florida Statutes, provides this is the name of the manufacturer or wholesale distributor from whom the wholesale distributor purchased the prescription drug; the prescription drug purchased by the wholesale distributor; the amount purchased; when it is purchased; and may include the price.

2. How does your agency determine if the information is a trade secret? For example, does the wholesale distributor make a claim of trade secret that is independently evaluated by your agency? Please explain the process.

The department does not determine if the matter is a trade secret. If the wholesale distributor alleges the matter is a trade secret the department advises the wholesale distributor to indicate on the record(s)/document(s) that the matter is a trade secret. Frequently the document is provided by a wholesale distributor after review by their regulatory attorney and is marked as a trade secret document when received by the department.

3. What is the identifiable public purpose or goal of the exemption?

The list is one key element in protecting the prescription drug supply. The list allows verification that only authorized parties supply drugs into Florida. The goal is that an authorized party will only supply legitimate prescription drugs and thus an authorized party will not supply counterfeit drugs. When the prescription drug wholesale distributor provides the list of their prescription drug supplier or the firms that the wholesale distributor obtains prescription drugs from, DDC is able to verify that the suppliers are authorized to sell prescription drugs in the United States. The list also allows DDC to verify that the suppliers are properly registered with the Federal Food and Drug Administration as manufacturers if applicable or with DDC as wholesalers if applicable.

4. Can the information contained in the records be readily obtained by alternative means? If so, how?

The information could be obtained by in-person inspections of the business records of each prescription drug wholesale distributor at a significant cost to the state. If the wholesale distributor were not required to provide the "list" the inspector would have to review the purchase invoices of the wholesale distributor to determine who the wholesale distributor purchased prescription drugs from during the year. The records could be electronic or in paper; the records could be of the shipper and not the seller of the prescription drugs; the records could be significant. Investigation of the records would require more time and cost more than receiving the "list."

5. Is the record protected by another exemption? If so, please explain and provide a citation.

The “list” is protected by section 499.051, Florida Statutes if there is an investigation but otherwise there is no additional protection in chapter 499. The list is protected by section 119.07 and 812.081, Florida Statutes.

6. Are there multiple exemptions for the same type of record that it would be appropriate to merge exemptions?

DDC is unaware of any similar exemptions for this type of record.

7. Has your agency received a public record request for any trade secret information? If so:

DDC is unaware of any request for this record.

- a. Please describe the types of entities or persons requesting such information and how many requests were received each year since October 2016.

Not applicable.

- b. Was the information released? If so, please explain the circumstances.

Not applicable.

8. Has your agency received any public complaints regarding the exemption? If so:

DDC is unaware of any complaints regarding this exemption.

- a. How many complaints has your agency received?

Not applicable.

- b. What were the substance of the complaints?

Not applicable.

9. There is a distinction between records that are made “exempt” and records that are made “confidential and exempt.” A record classified as “exempt” from public disclosure may be disclosed under certain circumstances. If the Legislature designates a record as “confidential and exempt” from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated by statute.

The exemption under review provides that such information is confidential and exempt from public record requirements. As such, the custodian for your program may only release the confidential and exempt information to the persons or entities specifically designated by statute. Has your agency released the confidential and exempt information?

Yes.

If yes:

- a. Under what circumstances did your agency release the confidential and exempt information?

Subsection 499.051(7)(c), Florida Statutes provides that the department may provide the information to any law enforcement agency or any other regulatory agency. "However, the receiving agency shall keep such records confidential and exempt as provided in this subsection."

- b. Does your agency ever need to share the confidential and exempt information with any person or entity not specified in statute? If so, who?

No.

10. Has your agency had any difficulties interpreting or applying the exemption? If so, please explain.

No.

11. Is there any case law interpreting the exemption? If so, please explain and provide appropriate case citations.

DDC is unaware of any case law.

12. Are there any pending judicial or administrative disputes or actions related to the exemption? If so, please explain and provide judicial or administrative citations.

DDC is unaware of any pending disputes or actions.

13. Does any other state or federal law provide a public record exemption for the information protected by the exemption? If so:

Not completely. Until the investigation is complete and as part of an application there is protection.

- a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.

Subsection 499.051(7), Florida Statutes would protect the "list" if the same were obtained during an investigation of the wholesale distributor until the investigation is complete. The fact that the "list" is a trade secret is what protects the list/information. If the information was obtained during the renewal process it would be protected pursuant to subsection 499.012(3)(c), Florida Statutes, as a

trade secret.

- b. Please explain which exemption your agency relies upon when responding to a public record request that would include such information.

The agency has not received a request for the information. If the agency received a request for the information, the agency would rely on all provisions of the statutes providing protection for the information.

- c. Can the public record exemption be repealed or merged with the other exemption(s)? Please explain.

The public records exemption should not be repealed or merged with other exemptions as it protects a wholesale distributor's supplier list from their competitors. The supplier list is not otherwise protected by statute.

14. Does your agency use any rules to implement the exemption? If so, please identify the applicable rules and statutory basis for the rules. If not, does your agency recommend that the Legislature authorize additional rulemaking authority to the agency?

DDC does not use rules to implement the exemptions. DDC does not recommend rulemaking authority.

15. Does your agency recommend that the Legislature repeal the public record exemption, reenact the public record exemption as is, or reenact the public record exemption with changes? Please explain.

DDC recommends reenactment of the public record exemption as is because there has been no litigation over the exemption; access to records has not been a significant issue for DDC; and the exemption appears to be a fair protection of business interest and public's right to know. The "list" is a powerful tool for regulation of prescription drugs in Florida and a very cost effective method of reviewing the parties involved.

16. Please provide any additional comments regarding the public record exemption under review.

None.

The Senate Innovation, Industry, and Technology Committee
October 21, 2020

Open Government Sunset Review Questionnaire
(Information held by the Department of Business and Professional Regulation)

PLEASE RETURN THIS QUESTIONNAIRE BY NOVEMBER 13, 2020, TO:

Patrick L. “Booter” Imhof
Staff Director
Committee on Innovation, Industry, and
Technology
Imhof.Booter@flsenate.gov
Phone: (850) 487-5957

Section 499.0121(7)(b), F.S., provides a public records exemption for trade secrets (as defined in s. 812.081, F.S.) contained in those portions of the written list provided to the Florida Department of Business and Professional Regulation (DBPR) of all wholesale distributors and manufacturers from whom the wholesale distributor purchases prescription drugs. The information that constitutes a trade secret as defined in s. 812.081, F.S., must be maintained as confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution as required under s. 499.051, F.S. In 2016, the Legislature amended this paragraph to be subject to the Open Government Sunset Review Act.

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the provisions of the Open Government Sunset Review Act (s. 119.15, F.S.).

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 499.0121(7) AND 812.081 FLORIDA STATUTES, ARE INCLUDED FOR YOUR CONVENIENCE, WITH THE EXEMPTION PROVISION SHOWN IN BOLD TYPE.

Agency or Organization Completing this Questionnaire: *Pharmaceutical Research and Manufacturers of America (PhRMA). PhRMA is a voluntary, nonprofit association representing the nation’s leading research-based pharmaceutical and biotechnology companies.*

Name of Person Completing the Questionnaire: Michael Anway

Title: Senior Director, State Advocacy

Telephone Number: 202-552-9916

E-mail Address: Manway@phrma.org

Date that this Questionnaire was Completed: 11/12/20

1. What portions of the written lists that you as a wholesale distributor provide to the department do you consider to be trade secrets exempted under this provision?

Pharmaceutical Research and Manufacturers of America (PhRMA) is not a wholesale distributor and thus does not provide written lists to the department pursuant to section 499.0121(7), Florida Statutes. PhRMA's members, however, are leading research-based pharmaceutical manufacturers whose information is subject to protection under section 499.0121(7).

2. How do you identify for the department which information is a trade secret? Please explain the process.

Because PhRMA is a trade association representing pharmaceutical manufacturers and is not a wholesale distributor, PhRMA itself does not identify trade-secret information pursuant to section 499.0121(7).

3. In your opinion, what is the identifiable public purpose or goal of the exemption?

Trade secrets are an integral part of the pharmaceutical business. Pharmaceutical manufacturers spend billions of dollars each year investigating and developing new life-saving and life-enhancing drugs for patients, including researching vaccines to combat COVID-19 and treatments to mitigate its effects. Pharmaceutical manufacturers develop drugs, adjust their pricing, and market their products using proprietary methods that aim to balance competing concerns, including promoting market access to life-changing medicines while generating the capital necessary to enable continued scientific innovation. Their substantial investments in investigational medicines rely on strong legal protections for their intellectual property—including trade secrets—which allow manufacturers to compete based on quality, price, and market access. If trade secrets could be released to the public, manufacturers could risk losing their competitive edge with respect to the disclosed information, inhibiting their ability to innovate or compete.

Every state in the nation has enacted legal protections for trade secrets, and Florida is no exception. Congress, too, has recognized that federal protection is necessary to “incentivize future innovation while protecting and encouraging the creation of American jobs.” (Sen. Rep. No. 114-220, 2d Sess. p. 3 (2016)). It accordingly enacted the Defend Trade Secrets Act of 2016 (DTSA), which authorizes criminal and civil proceedings in federal court to stop trade-secret misappropriation. (18 U.S.C. § 1831 et seq.). Florida should not impede the pharmaceutical manufacturing sector's ability to innovate and produce vital drugs—thereby undermining the efficacy of the nationwide healthcare market—by failing to reenact section 499.0121(7)(b).

4. Do you know if the information contained in the records be readily obtained by alternative means? If so, how?

Whether propriety information contained in records transmitted by wholesale distributors pursuant to section 499.0121(7) could be readily obtained by alternative means is a circumstance-specific inquiry.

5. Do you know if the records are protected by other public record exemptions?

PhRMA is not aware of any other state public record exemption that categorically protects all information covered by section 499.0121(7). Whether particular records covered by section 499.0121(7) may be protected by other public record exemptions will be a circumstance-specific inquiry. Some records could be covered by other exemptions, such as section 499.051(7)(b), Florida Statutes, which creates a public records exemption for trade secrets contained in a complaint relating to compliance with the Florida Drug and Cosmetic Act or information obtained by the Florida Department of Business and Professional Regulation during the investigation of a complaint, or section 499.012(3)(c), Florida Statutes, which exempts trade-secret information submitted by an applicant on an application for a permit to manufacture or distribute prescription drugs.

6. If the answer to question #5 is yes, do you believe it would be appropriate to merge the public record exemptions?

Because the potentially applicable exemptions do not fully overlap, PhRMA does not believe that merger of these exemptions is appropriate unless the merger were purely ministerial (e.g., the consolidation of multiple exemptions in a single statutory section).

7. In your experience with the department, have there been any difficulties interpreting or applying the exemption?

Because PhRMA is a trade association of manufacturers rather than a wholesale distributor, PhRMA does not have direct experience interpreting or applying the exemption.

8. Have you been involved in any litigation regarding the exemption?

No.

9. Are you involved in or have knowledge of any pending judicial or administrative dispute or action related to the exemption?

No.

10. Do you know of any other federal law to protect this type of information? If so:

- a. Please provide the specific federal citation for each exemption and specify the types of information the federal law protects.

The disclosure of trade secret information protected by section 499.0121(7)(b) would violate two provisions of federal law. Section 499.0121(7)(b)'s exemption of that trade secret information from public disclosure therefore serves the important function of ensuring that state officials are complying with federal law.

First, the Takings Clause of the Fifth Amendment to the U.S. Constitution prevents public officials from taking or destroying the value of private property without providing adequate compensation. The U.S. Supreme Court has held that trade secrets are a form of private

property protected by the Takings Clause. See Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984). And courts have properly recognized that because the value of a trade secret lies in its secrecy, the disclosure of a trade secret to the public immediately destroys the value of the property. Thus, when state laws permit the disclosure or publication of trade secrets, those disclosures and publications are properly considered takings, and the state laws that authorize them can be challenged through lawsuits asserting violations of the Takings Clause.

Second, the federal Defend Trade Secrets Act (DTSA) prohibits the unauthorized disclosure of trade secrets and thereby preempts state laws that purport to authorize such disclosures. The DTSA prohibits “misappropriation,” which, as relevant here, includes the “disclosure or use of a trade secret of another without express or implied consent by a person who ... at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was ... derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret.” 18 U.S.C. § 1839(5)(B). State laws that purport to authorize the disclosure of trade secrets therefore authorize misappropriations, which are violations of federal law. See 18 U.S.C. § 1836(a), (b)(3). And under the U.S. Constitution’s Supremacy Clause, state laws that conflict with federal laws are preempted—i.e., they are null and void. Thus, by protecting manufacturers’ trade-secret information from disclosure, section 499.0121(7)(b) helps to ensure that the State’s public records statutes do not conflict with federal statutory law.

PhRMA notes that while these two provisions of federal law could provide PhRMA’s members with legal remedies to prevent the unauthorized disclosure of manufacturers’ trade secrets, the State’s existing public records exemptions, including section 499.0121(7)(b), are better safeguards from a public policy perspective because they provide both manufacturers and the State with more certainty about what information may be subject to public disclosure, without requiring resort to federal litigation.

- b. If there is another exemption, do you know which exemption the department relies upon when responding to a public records request that would include such information?

PhRMA is not aware of the department having relied on the Takings Clause or the DTSA when responding to public records requests that would include information protected by section 499.0121(7).

11. Do you recommend that the Legislature repeal the public record exemption, reenact the public record exemption as is, or reenact the public record exemption with changes? Please explain.

PhRMA respectfully suggests that the Legislature consider adopting a public record exemption that covers all confidential and proprietary business information in the State or local government’s possession, rather than enacting specific carve-outs for confidential information depending on how that information is obtained. Trade secrets are valuable intellectual property that should be presumptively protected from disclosure as a matter of due course. In enacting a comprehensive public records exemption for trade secrets, the Legislature should adopt safeguards that will help ensure that manufacturers’ sensitive information is not disseminated, including (but not limited to):

- *Providing manufacturers with notice within 30 days of receipt of a public records request that information sought under section 119.07(1), Florida Statutes or section 24(a) of Article I of the Florida Constitution may contain trade secrets.*
- *Providing manufacturers with an opportunity to file written objections to any such requests for information and to explain why the information sought should be protected.*
- *If the authority determines that information labeled a trade secret by the manufacturer is not subject to an exemption, providing manufacturers with at least a 30-day grace period to seek judicial relief before releasing the contested materials in response to the public records act request.*

12. Do you have any additional comments regarding the public record exemption under review?

PhRMA appreciates the opportunity to comment on the public record exemption under review, and is available to discuss any aspects of the above questionnaire if that would be helpful to the Senate Innovation, Industry, and Technology Committee.

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.

(7) PRESCRIPTION DRUG PURCHASE LIST.—

(a) Each wholesale distributor, except for a manufacturer, shall annually provide the department with a written list of all wholesale distributors and manufacturers from whom the wholesale distributor purchases prescription drugs. A wholesale distributor, except a manufacturer, shall notify the department not later than 10 days after any change to either list.

(b) Such portions of the information required pursuant to this subsection which are a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information is required to be maintained under s. 499.051. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

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: SPB 7034

INTRODUCER: Regulated Industries Committee

SUBJECT: OGSR/Trade Secrets/Department of Business and Professional Regulation

DATE: February 17, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kraemer	Imhof		RI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7034 amends s. 499.051, F.S., to remove the scheduled repeal of a public records exemption for a trade secret related to a complaint filed against a licensed prescription drug manufacturer, repackager, or distributor, or a trade secret obtained by the Department of Business and Professional Regulation (DBPR) pursuant to inspections and investigations of licensees as authorized under s. 499.051, F.S. Affected licensees include prescription and over-the-counter drug manufacturers, drug distributors, repackagers, and wholesalers; manufacturers of drugs, devices, or cosmetics; and certain health care clinics, veterinary drug retail establishments, freight forwarders, and logistics providers.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, qualified trade secrets remain exempt from public disclosure.

The bill is effective October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁷

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁸
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.

²⁸ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,²⁹ and the right to recover damages for the misappropriation of a trade secret.³⁰ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³¹

Section 688.002(4), F.S., defines the term "trade secret" to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of

²⁹ Section 688.003, F.S.

³⁰ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³¹ See Section 688.008, F.S.

advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has “independent economic value,” rather than just be “of value,” as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt “trade secrets” as defined in s. 688.002(4), F.S., or include “trade secrets” as defined in s. 688.002(4), F.S., within the meaning of the term “proprietary confidential information” or “proprietary business information” when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.

- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.
- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.

- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.
- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³² In *Seapro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³³

Open Government Sunset Review Questionnaires

In September 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to the Department of Business and Professional Regulation, Division of Drugs, Devices, and Cosmetics (DDC), and to the Pharmaceutical Research and Manufacturers of America (PhRMA) for consideration. Both parties responded to the questionnaires, and staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

According to the DDC, when an allegation of failing to meet current good manufacturing practices is investigated, the information collected typically includes a firm's formula and ingredients for the product, the design for the product, the development and manufacturing process, and other procedures related to the product.³⁴ When an inspection or investigation of a firm is conducted to determine if the firm is selling products to authorized recipients, the information collected may include financial documents and customer lists.³⁵ When prescription drugs are manufactured and there is a potential manufacturing issue, immediate access to a firm's records protects public health and safety; firms provide immediate access with the knowledge its records will be protected from public disclosure pursuant to the trade secret exemptions in Florida law.³⁶

³² *Seapro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³³ *Id.*

³⁴ See Response by the DDC to Open Government Sunset Review Questionnaire (Sep. 25, 2020) (on file with the Senate Committee on Regulated Industries).

³⁵ *Id.*

³⁶ *Id.*

According to a trade association for pharmaceutical and biotechnology companies and manufacturers, pharmaceutical manufacturers invest substantially each year investigating and developing new life-saving and life-enhancing drugs for patients, including vaccines.³⁷ Such investment relies on strong legal protections for intellectual property, including trade secrets, which allow manufacturers to compete based on quality, price, and market access. If trade secrets were subject to public inspection during or following an investigation, a manufacturer's ability to innovate or compete could be hindered.³⁸ The association further notes that an investigation may not uncover any violations, and that a manufacturer should not be penalized for cooperating with an investigation by risking exposure of valuable trade secrets.³⁹

The questionnaire asked if the exemption should be repealed or merged with other exemptions, and neither respondent favored such action, as the various exemptions in ch. 499, F.S., do not have overlapping subject matter. The DDC recommended reenactment of the exemption as a fair protection of business interest and the public's right to know.⁴⁰ PhRMA suggested it would be preferable for the Legislature to adopt a broad exemption covering all confidential and proprietary business information held by the state, with safeguards that will help ensure that manufacturers' sensitive information is not disseminated, including (but not limited to):

- Providing manufacturers with notice within 30 days of receipt of a public records request that information sought under section 119.07(1), Florida Statutes, or section 24(a) of Article I of the Florida Constitution may contain trade secrets;
- Providing manufacturers with an opportunity to file written objections to any such requests for information and to explain why the information sought should be protected;
- If the authority determines that information labeled a trade secret by the manufacturer is not subject to an exemption, providing manufacturers with at least a 30-day grace period to seek judicial relief before releasing the contested materials in response to the public records act request.⁴¹

If such comprehensive changes are not made, PhRMA recommended the exemption in s. 499.051, F.S., should be reenacted.⁴²

Trade Secrets

For purposes of the exemption in s. 499.051, F.S., the term "trade secrets," as defined in s. 812.081(1)(c), F.S., means information for which an owner "takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes." Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the

³⁷ See Response by Pharmaceutical Research and Manufacturers of America (PhRMA) to Open Government Sunset Review Questionnaire (Nov. 12, 2020) (on file with the Senate Committee on Regulated Industries).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See Response by the DDC to Open Government Sunset Review Questionnaire, at p. 5, (Sep. 25, 2020) (on file with the Senate Committee on Regulated Industries).

⁴¹ See Response by Pharmaceutical Research and Manufacturers of America (PhRMA) to Open Government Sunset Review Questionnaire, at p. 5, (Nov. 12, 2020) (on file with the Senate Committee on Regulated Industries).

⁴² *Id.*

business an advantage, or the opportunity to do so, over those who do not know or use such information.⁴³

Under Section 812.081(1)(c), F.S., the term “trade secret” includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

In 2016, when the term “trade secret” was expanded to include the term “financial information,”⁴⁴ s. 499.051, F.S., was revised to incorporate that expanded meaning, and made subject to repeal on October 2, 2021 unless saved through reenactment by the Legislature.⁴⁵

III. Effect of Proposed Changes:

The bill reenacts the exemption for qualified trade secrets from public disclosure in s. 499.051, F.S., for a trade secret:

- Submitted as part of the permitting or renewal process related to the manufacture, repackaging, or distribution of a drug or for a permit or product registration; or
- Contained in a complaint investigated by the DBPR or a trade secret obtained by the DBPR pursuant to any investigation of a licensee conducted to enforce public health and safety rules or the requirements of ch. 499, F.S., (Florida Drug and Cosmetic Act), ch. 465, F.S., (Pharmacy), ch. 501, F.S., (Consumer Protection), and ch. 893, F.S., (Drug Abuse Prevention and Control).

Affected licensees include prescription and over-the-counter drug manufacturers, drug distributors, repackagers, and wholesalers; manufacturers of drugs, devices, or cosmetics; and certain health care clinics, veterinary drug retail establishments, freight forwarders, and logistics providers.

The bill reenacts the exemption by removing the repeal date of October 2, 2021 in current law.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the

⁴³ Section 812.081(1)(c), F.S.

⁴⁴ Ch. 2016-5, Laws of Fla.

⁴⁵ See Ch. 2016-6, s. 11, Laws of Fla.

public records requirements. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 s. 499.051 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Regulated Industries

580-01136-21

20217034pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 499.051, F.S., which relates to an exemption from public records requirements for trade secrets contained within complaints or pursuant to an investigation of such complaints obtained by the Department of Business and Professional Regulation, which are submitted by permittees relating to the manufacture, repackaging, or distribution of a drug or for a permit or product registration or for the renewal of such permit or product registration; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 499.051, Florida Statutes, is 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 during business hours for the purpose of enforcing this chapter, 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

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

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for the purpose of determining compliance with this chapter and rules adopted under this chapter regarding any drug, device, or cosmetic.

(3) Any application for a permit or product registration or for renewal of such permit or registration made pursuant to this chapter and rules adopted under this chapter constitutes permission for any entry or inspection of the premises in order to verify compliance with this chapter 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. 499.831 and rules adopted under those sections 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 and the rules adopted by the department to administer this chapter, in order to discover, investigate, and determine the existence of compliance, or to elicit, receive, respond to, and resolve complaints and violations.

(5) The authority to inspect under this section includes the authority to access, review, and copy any and all financial documents related to the activity of manufacturing, repackaging, or distributing prescription drugs.

(6) The authority to inspect under this section includes the authority to secure:

(a) Samples or specimens of any drug, device, or cosmetic;

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59 or

60 (b) Such other evidence as is needed for any action to
61 enforce this part and the rules adopted under this part.

62 (7) (a) The complaint and all information obtained pursuant
63 to the investigation by the department are confidential and
64 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
65 Constitution until the investigation and the enforcement action
66 are completed.

67 (b) Information that constitutes a trade secret, as defined
68 in s. 812.081, contained in the complaint or obtained by the
69 department pursuant to the investigation must remain
70 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
71 of the State Constitution as long as the information is held by
72 the department. ~~This paragraph is subject to the Open Government~~
73 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
74 ~~repealed on October 2, 2021, unless reviewed and saved from~~
75 ~~repeal through reenactment by the Legislature.~~

76 (c) This subsection does not prohibit the department from
77 using such information for regulatory or enforcement proceedings
78 under this chapter or from providing such information to any law
79 enforcement agency or any other regulatory agency. However, the
80 receiving agency shall keep such records confidential and exempt
81 as provided in this subsection.

82 Section 2. This act shall take effect October 1, 2021.

**The House Oversight, Transparency & Public Management Subcommittee
The Senate Innovation, Industry, and Technology Committee
September 16, 2020**

**Open Government Sunset Review Questionnaire
(Data, programs, or supporting documentation that is a trade secret and held by an agency)**

PLEASE RETURN THIS QUESTIONNAIRE VIA EMAIL BY OCTOBER 23, 2020, TO BOTH:

**Patrick L. “Booter” Imhof
Staff Director
Senate Committee on Innovation,
Industry, and Technology
Imhof.Booter@flsenate.gov
Phone: (850) 487-5957**

**Chris Villa,
Attorney
House Oversight, Transparency & Public
Management Subcommittee
Chris.Villa@myfloridahouse.gov
Phone: (850) 717-4890**

Section 815.04(3), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption was reenacted to include the new definition of “trade secret” and is subject to the Open Government Sunset Review Act (s. 119.15, F.S.).

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 815.04 AND 812.081, F.S., ARE INCLUDED FOR YOUR CONVENIENCE.

Agency, Organization, or Entity Completing this Questionnaire: City of Clearwater

Name of Person Completing the Questionnaire: Daniel Mayer

Title: IT Director

Telephone Number: (727)562-4662

E-mail Address: Daniel.mayer@myclearwater.com

Date that this Questionnaire was Completed: 10/22/2020

Public Record Exemption under Review

Section 815.04(3), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information.

1. What specific records are affected by the public record exemption?
Source code, support and training documentation, service strategy, third-party service agreements, etc.
2. Whom does the exemption uniquely affect, as opposed to the general public?
Companies and businesses engaging in service provision to public sector clients.
3. What is the identifiable public purpose or goal of the exemption?
Protection of intellectual property and business service advantage
4. How does your agency determine if data, programs, or supporting documentation is a trade secret? For example, does the owner of the data, programs, or supporting documentation make a claim of trade secret that is independently evaluated by your agency? Please explain the process.
Any data, programs, or supporting documentation that is related to a specific system, software or computer service, but is not the product of activities or transactions directly related to the jurisdiction's business services is considered to be a product "trade secret."
5. Can the protected information contained in the records be readily obtained by alternative means? If so, how?
Unsure
6. Has your agency received a public record request for any such trade secret information? If “yes:” **No**
 - a. Please describe the types of entities or persons requesting such information and how many requests were received each year since October 1, 2016.
 - b. Was the information released? Please explain.
7. The exemption under review provides that the protected software may be shared or exchanged with another public agency. Has the agency shared or exchanged protected software with another public agency? If yes: **No**
 - a. Under what circumstances did the agency share the exempt information?
 - b. Does the agency ever need to share the exempt information with any person or entity

not specified in statute? If so, who?

8. The public record exemption under review defines “trade secret” in accordance with Florida’s criminal statutes. However, Florida’s Uniform Trade Secrets Act also defines “trade secret” in s. 688.002(4), F.S. Would it be more appropriate for the public record exemption under review to use the definition of “trade secret” provided for in the Uniform Trade Secrets Act as opposed to the definition of “trade secret” provided for in Florida’s criminal statutes? Please explain. **Unsure**
 - a. Has the agency had any difficulties interpreting or applying the exemption? If “yes,” please explain. **No**
 - b. Is there any case law interpreting the exemption? If “yes,” please explain and provide the appropriate case citations. **Unknown**
9. Are there any pending judicial or administrative disputes or actions related to the exemption? If “yes,” please explain and provide the appropriate judicial or administrative citations. **No**
10. Does any other state or federal law provide a public record exemption for the information protected by the exemption? If “yes:” **Unknown**
 - a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.
 - b. Please explain which exemption the agency relies upon when responding to a public record request that would include such information.
 - c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.
11. The exemption provides criminal penalties for persons who commit specified offenses against intellectual property. To the best of your knowledge, has any person been arrested or criminally charged with a violation of the exemption in s. 815.04, F.S., in relation to intellectual property in the custody of the agency. If “yes:” **No**
 - a. How many such persons have been arrested or charged?
 - b. What was the disposition of the criminal case?
 - c. Was intellectual property subject to the exemption destroyed or disclosed to the public.

12. Does your agency recommend that the Legislature repeal the public record exemption under review, or reenact the public record exemption?

☐ repeal the exemption

☐ reenact the exemption 'as is'

☒ X reenact the exemption with the following changes:

"include language applicable to Remote Software Service Providers and/or "Cloud" provided software and services."

13. Please provide a brief explanation of your recommendation in question 12.

References should apply to current industry conditions and offerings.

14. Please provide any additional comments regarding the public record exemption under review.

N/A

815.04 Offenses against intellectual property; public records exemption.—

(1) A person who willfully, knowingly, and without authorization introduces a computer contaminant or modifies or renders unavailable data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.

(2) A person who willfully, knowingly, and without authorization destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.

(3) Data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that resides or exists internal or external to a computer, computer system, computer network, or electronic device is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(4) A person who willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation that is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.

(5)(a) Except as otherwise provided in this subsection, an offense against intellectual property is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-92; s. 1, ch. 94-100; s. 431, ch. 96-406; s. 1, ch. 2014-177; s. 4, ch. 2014-208; s. 5, ch. 2016-5; s. 20, ch. 2016-6.

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

The Senate Innovation, Industry, and Technology Committee
September 3, 2020

Open Government Sunset Review Questionnaire
(Information held by the Department of Business and Professional Regulation)

PLEASE RETURN THIS QUESTIONNAIRE BY OCTOBER 2, 2020, TO:

Patrick L. "Booter" Imhof
Staff Director
Committee on Innovation, Industry, and
Technology
Imhof.Booter@flsenate.gov
Phone: (850) 487-5957

Section 499.051, F.S., provides a public records exemption for trade secrets (as defined in s. 812.081, F.S.) contained in a complaint relating to compliance with the Florida Drug and Cosmetic Act, or information obtained by the Florida Department of Business and Professional Regulation during the investigation of a complaint. The information that constitutes a trade secret as defined in s. 812.081, F.S., must be maintained as confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution as required under s. 499.051, F.S. In 2016, the Legislature amended the paragraph to be subject to the Open Government Sunset Review Act.

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the provisions of the Open Government Sunset Review Act (s. 119.15, F.S.).

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTION 499.0121, AND 812.081 FLORIDA STATUTES, ARE INCLUDED FOR YOUR CONVENIENCE, WITH THE EXEMPTION PROVISION SHOWN IN BOLD TYPE.

Agency or Organization Completing this Questionnaire: Department of Business and Professional Regulation, Division of Drugs, Devices, and Cosmetics (DDC)

Name of Person Completing the Questionnaire: Renee Alsobrook

Title: Chief of Compliance and Enforcement, DDC

Telephone Number: 850.717.1804

E-mail Address: renee.alsobrook@myfloridalicense.com

Date that this Questionnaire was Completed: 09.25.2020

1. What portions of the complaints and other information obtained by the department during the investigation of complaints are considered to be trade secrets exempted under this provision?

The part of a complaint and other information obtained by the department during an investigation that would be considered trade secret depends on the type of investigation and information gathered during the investigation. When the department investigates an allegation of failing to meet current good manufacturing practices, the information collected usually includes a firm's formula for the product, information concerning the ingredients for the product, the design for the product, the development and manufacturing process, and procedures related to the product for example. When the department conducts inspection/investigation of a firm to determine if the firm is selling products to authorized recipients, the information collected may be financial documents and customer list. When the department conducts investigations of a firm to determine compliance with provisions of section 499.0121, Florida Statute, the information collected may contain policy and procedures of the firm, security information of the firm, contracts the firm has entered, a list of suppliers, and processes implemented by the firm for production of product.

2. How does your agency determine if the information is a trade secret? For example, does complainant or another party make a claim of trade secret that is independently evaluated by your agency? Please explain the process.

The department does not determine if the matter is a trade secret. If the complainant or party alleges the matter is a trade secret the department advises the complainant or party to indicate on the record(s)/document(s) that the matter is a trade secret. The department indicates in the investigative report that trade secret documents are included in the report.

3. What is the identifiable public purpose or goal of the exemption?

The goal of the exemption for the division is to obtain information necessary to determine a firm's compliance with chapter 499, Florida Statutes as quickly and efficiently as possible. When prescription drugs are manufactured and there is a possible issue with the manner in which the prescription drugs are being manufactured, immediate access to a firm's records protects the public health and safety. The firm provides immediate access to all their records as the firm knows their records will be protected from public release because of the trade secret provisions set forth in the law.

4. Can the information contained in the records be readily obtained by alternative means? If so, how?

The records discussed above are not readily available by an alternative means.

5. Is the record protected by another exemption? If so, please explain and provide a citation.

DDC is unaware of another exemption.

6. Are there multiple exemptions for the same type of record that it would be appropriate to merge exemptions?

DDC is unaware of another exemption.

7. Has your agency received a public record request for any trade secret information? If so:

No requests have been received.

- a. Please describe the types of entities or persons requesting such information and how many requests were received each year since October 2016.

Not applicable.

- b. Was the information released? If so, please explain the circumstances.

Not applicable.

8. Has your agency received any public complaints regarding the exemption? If so:

No complaints have been received regarding the trade secret complaint.

- a. How many complaints has your agency received?

Not applicable.

- b. What were the substance of the complaints?

Not applicable.

9. There is a distinction between records that are made “exempt” and records that are made “confidential and exempt.” A record classified as “exempt” from public disclosure may be disclosed under certain circumstances. If the Legislature designates a record as “confidential and exempt” from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated by statute.

The exemption under review provides that such information is confidential and exempt from public record requirements. As such, the custodian for your program may only release the confidential and exempt information to the persons or entities specifically designated by statute. Has your agency released the confidential and exempt information?

Yes.

If yes:

- a. Under what circumstances did your agency release the confidential and exempt

information?

Subsection 499.051(7)(c), Florida Statutes provides that the department may provide the information to any law enforcement agency or any other regulatory agency. “However, the receiving agency shall keep such records confidential and exempt as provided in this subsection.”

- b. Does your agency ever need to share the confidential and exempt information with any person or entity not specified in statute? If so, who?

No.

10. Has your agency had any difficulties interpreting or applying the exemption? If so, please explain.

The agency has not had any difficulties interpreting or applying the exemption.

11. Is there any case law interpreting the exemption? If so, please explain and provide appropriate case citations.

DDC is unaware of any case law interpreting the exemption.

12. Are there any pending judicial or administrative disputes or actions related to the exemption? If so, please explain and provide judicial or administrative citations.

DDC is unaware of any pending judicial or administrative disputes or actions related to the exemption.

13. Does any other state or federal law provide a public record exemption for the information protected by the exemption? If so:

- a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.

Subsection 499.012(3)(c), Florida Statutes provides that information required to be submitted on an application for a permit, certification or product registration application which is trade secret shall be maintained as trade secret.

Subsection 499.0121(7), Florida Statutes provides that a wholesale distributor shall provide a written list to the department of all purchases by the wholesale distributor of prescription drugs from wholesale distributors and manufacturers.

Section 499.931, Florida Statutes provides information required to be submitted under part III of chapter 499 which is trade secret shall be maintained as trade secret. Information required to be submitted could be application or permitting information as well as information required during an inspection or investigation.

- b. Please explain which exemption your agency relies upon when responding to a

public record request that would include such information.

If the request is for information in an application file the agency would rely on the exemption set forth in subsection 499.012(3)(c) and 499.931, Florida Statutes. If the request is for a list of purchases by a wholesale distributor the agency would rely on the exemption in 499.0121(7), Florida Statutes. If the request is for a copy of an investigative report that is final and the report is subject to disclosure as a public record, the portion of the file that contains trade secret information would be redacted and the agency would rely on section 119.07 and 812.081, Florida Statutes for exempting the documents from disclosure as authorized by subsection 499.051(7)(b), Florida Statutes.

- c. Can the public record exemption be repealed or merged with the other exemption(s)? Please explain.

The public records exemption should not be repealed or merged with other exemptions as the request for applications for permits types are covered by separate parts of chapter 499, Florida Statutes and eliminating section 499.931, Florida Statutes would eliminate protection of trade secret information for the medical gas permit applicants.

Eliminating the trade secret protection for purchases by a wholesale distributor would provide their customer list to competitors. The client list is not otherwise protected by statute.

14. Does your agency use any rules to implement the exemption? If so, please identify the applicable rules and statutory basis for the rules. If not, does your agency recommend that the Legislature authorize additional rulemaking authority to the agency?

DDC does not use rules to implement the exemptions. DDC does not recommend rulemaking authority.

15. Does your agency recommend that the Legislature repeal the public record exemption, reenact the public record exemption as is, or reenact the public record exemption with changes? Please explain.

DDC recommends reenactment of the public record exemption as is because there has been no litigation over the exemption; access to records has not been a significant issue for DDC; and the exemption appears to be a fair protection of business interest and public's right to know.

16. Please provide any additional comments regarding the public record exemption under review.

None.

**The House Oversight, Transparency & Public Management Subcommittee
The Senate Innovation, Industry, and Technology Committee
September 16, 2020**

Open Government Sunset Review Questionnaire
(Data, programs, or supporting documentation that is a trade secret and held by an agency)

PLEASE RETURN THIS QUESTIONNAIRE VIA EMAIL BY OCTOBER 23, 2020, TO BOTH:

Patrick L. “Booter” Imhof
Staff Director
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Phone: (850) 487-5957

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Section 815.04(3), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption was reenacted to include the new definition of “trade secret” and is subject to the Open Government Sunset Review Act (s. 119.15, F.S.).

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 815.04 AND 812.081, F.S., ARE INCLUDED FOR YOUR CONVENIENCE.

Agency, Organization, or Entity Completing this Questionnaire:

Name of Person Completing the Questionnaire: Alison A. Parker // Kristen Davila

Title: Deputy General Counsel – Administration // Public Records Coordinator

Telephone Number: 850.717.1239 // 850.717.1185

E-mail Address: Alison.Parker@myfloridalicense.com //
Kristen.Davila@myfloridalicense.com

Date that this Questionnaire was Completed: Nov. 6, 2020 – Nov. 16, 2020

Public Record Exemption under Review

Section 815.04(3), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information.

1. What specific records are affected by the public record exemption?

Department of Business and Professional Regulation’s various divisions:

a. Alcoholic Beverages & Tobacco

- ☐ Management contracts
- ☐ Brand registration
- ☐ Certain bottling information
- ☐ Recipes – Distillery
- ☐ Certain tax documents (Auditing)

b. Boxing, Kickboxing & Mixed Martial Arts

- ☐ Proprietary Confidential Information (also covered under s. 548.062(2), F.S.)
- ☐ Boxing Purses (Financial)
- ☐ Ticket Sales
- ☐ Gross receipts after match
- ☐ Amateur Boxing Payouts to fighters (only when promoter claims trade secret)

c. Condominiums, Timeshares and Mobile Homes

- ☐ Service contracts relating to the operation of reservation systems

d. Drugs, Devices & Cosmetics

- ☐ Applicants’ gross annual receipts
- ☐ Surety Bonds or other equivalent security
- ☐ Shipping documents or sales invoices

e. Hotels & Restaurants

- ☐ Recipes/Formulas
- ☐ Competitive contract proposals
- ☐ Equipment/device technical construction diagrams

f. Pari-Mutuel Wagering

- ☐ Permitholders’ financial information
- ☐ Revenue information regarding slot machines
- ☐ Internal auditing controls and reports of internal auditors
- ☐ Seminole Tribe

g. Professions (various)

- ☐ Employee Leasing Quarterly and Annual Reports
- ☐ Bureau of Education and Testing Course Provider submissions

2. Whom does the exemption uniquely affect, as opposed to the general public?

This exemption protects regulatory licensees and applicants who are required to submit various materials in order to attain or retain licensure.

3. What is the identifiable public purpose or goal of the exemption?

This exemption protects proprietary and trade secret information from disclosure that would perhaps otherwise be responsive to public records requests. Additionally, the exemption fosters innovation via creators knowing that their content will be protected from disclosure to potential competitors.

4. How does your agency determine if data, programs, or supporting documentation is a trade secret? For example, does the owner of the data, programs, or supporting documentation make a claim of trade secret that is independently evaluated by your agency? Please explain the process.

The owner of the data, programs, or supporting documentation must assert the claim of trade secret to the Department upon submission of those materials to the Department. The onus to assert trade secret protection solely remains on the owner of the information or data. If the Department has received material that the sender has identified as “trade secret” and the material does not appear to meet the statutory definition of trade secret or has not been protected, the Office of Open Government would reach out to the information’s owner for clarification or context. If the explanation given still does not rise to the statutory and case law definition of trade secret, the Department would alert the owner that the information or data will not be treated as confidential.

5. Can the protected information contained in the records be readily obtained by alternative means? If so, how?

If the item is purely and legitimately trade secret, these materials can only typically be discovered through litigation or by engaging with the vendor as a client. If the items or data can be easily obtained, the agency would not classify them as “trade secret”.

6. Has your agency received a public record request for any such trade secret information? If “yes:”

No. Not for trade secret information as contemplated by section 815.04(3), Florida Statutes.

a. Please describe the types of entities or persons requesting such information and how many requests were received each year since October 1, 2016.

N/A.

b. Was the information released? Please explain.

N/A.

7. The exemption under review provides that the protected software may be shared or exchanged with another public agency. Has the agency shared or exchanged protected software with another public agency? If yes:

Yes.

- a. Under what circumstances did the agency share the exempt information?

Pursuant to a Memorandum of Understanding (MOU) with a sister government agency. This MOU was signed by both state agencies. The trade secret information is kept confidential and is not otherwise shared.

- b. Does the agency ever need to share the exempt information with any person or entity not specified in statute? If so, who?

No.

8. The public record exemption under review defines “trade secret” in accordance with Florida’s criminal statutes. However, Florida’s Uniform Trade Secrets Act also defines “trade secret” in s. 688.002(4), F.S. Would it be more appropriate for the public record exemption under review to use the definition of “trade secret” provided for in the Uniform Trade Secrets Act as opposed to the definition of “trade secret” provided for in Florida’s criminal statutes? Please explain.

Yes, the verbiage in section 688.002(4), Florida Statutes, is a more “everyday” or working definition that is easier and more intuitive to apply to scenarios that arise when facilitating public records requests.

- a. Has the agency had any difficulties interpreting or applying the exemption? If “yes,” please explain.

Yes, at times. Section 812.081, Florida Statutes, now references “financial information” but this term is not defined. As it stands, this could be anything from the obviously redactable (e.g. credit card numbers) to the seemingly innocuous (e.g. a reference or logo representing the banking entity a licensee utilizes). Additionally, at times it is unclear on whether parts of a potentially proprietary document should be removed in full or removed in part (since typically in public records responses, the Open Government office would provide the materials minus any required redactions).

- b. Is there any case law interpreting the exemption? If “yes,” please explain and provide the appropriate case citations.

Yes. The onus is on the owner of the information or data to mark the materials at “trade secret” upon submission to the agency. The data must actually constitute trade secret; entities cannot circumvent public disclosure laws using the false aegis of a trade secret exemption. Courts occasionally weigh in on what constitutes trade secret; for instance, complaints made to a company do not constitute trade secret. The owner of the trade secret information must take affirmative steps to protect the information on its end as well.

Below are several seminal cases that address trade secret issues:

Sepco Corporation v. Florida Department of Environmental Protection, 839 So. 2d 781, 785-787 (Fla. 1st DCA 2003)

Crist v. Florida Department of Environmental Protection, 911 So. 2d 792 (Fla. 2005)

Seta Corporation of Boca, Inc. v. Office of the Attorney General, 756 So. 2d 1093 (Fla. 4th DCA 2000)

Cubic Transportation Systems, Inc. v. Miami-Dade County, 899 So. 2d 453, 454 (Fla. 3d DCA 2005)

James, Hoyer, Newcomer, Smiljanich & Yanchunis v. Rodale, Inc., So.3d 386, 389 (Fla. 1st DCA 2010).

Allstate Floridan Ins. Co. v Office of Ins. Regulation, 981 So. 2d 617 (Fla. 1st DCA 2008)

Office of Insurance Regulation v. State Farm Florida Insurance Company, 213 So. 3d 1104 (Fla. 1st DCA 2017)

Cf. Surterra Florida, LLC v. Florida Department of Health, 23 So. 3d 376 (Fla. 1st DCA 2017) (investor names were not trade secret).

Cf. Florida Power & Light Company v. Public Service Commission, 31 So. 3d 860 (Fla. 1st DCA 2010)

Southern Bell Telephone and Telegraph Company v. Beard, 597 So.. 2d 873, 876 (Fla. 1st DCA 1992)

9. Are there any pending judicial or administrative disputes or actions related to the exemption? If “yes,” please explain and provide the appropriate judicial or administrative citations.

No.

10. Does any other state or federal law provide a public record exemption for the information protected by the exemption? If “yes:”

Yes.

- a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.

Specifically, some DBPR division-specific citations include proprietary confidential information related to boxing, pursuant to section 548.062(2), Florida Statutes, and also the quarterly and annual reports associated with employee leasing entities, pursuant to section 455.229(1), Florida Statutes.

- b. Please explain which exemption the agency relies upon when responding to a public record request that would include such information.

The agency primarily utilizes section 815.04, Florida Statutes in this precise scenario.

- c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.

Probably not. If the exemption was repealed or merged, this section would lack clear direction on the applicable exemption(s).

- 11. The exemption provides criminal penalties for persons who commit specified offenses against intellectual property. To the best of your knowledge, has any person been arrested or criminally charged with a violation of the exemption in s. 815.04, F.S., in relation to intellectual property in the custody of the agency. If "yes:"**

No.

- a. How many such persons have been arrested or charged?

N/A.

- b. What was the disposition of the criminal case?

N/A.

- c. Was intellectual property subject to the exemption destroyed or disclosed to the public.

N/A.

- 12. Does your agency recommend that the Legislature repeal the public record exemption under review, or reenact the public record exemption?**

☐ repeal the exemption

☒ reenact the exemption 'as is'

☐ reenact the exemption with the following changes:

13. Please provide a brief explanation of your recommendation in question 12.

This exemption is fairly straightforward and is easily applicable to public records scenarios that the agency encounters.

14. Please provide any additional comments regarding the public record exemption under review.

All comments are subsumed within the answers to the earlier questions.

815.04 Offenses against intellectual property; public records exemption.—

- (1) A person who willfully, knowingly, and without authorization introduces a computer contaminant or modifies or renders unavailable data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (2) A person who willfully, knowingly, and without authorization destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (3) Data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that resides or exists internal or external to a computer, computer system, computer network, or electronic device is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.
- (4) A person who willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation that is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (5)(a) Except as otherwise provided in this subsection, an offense against intellectual property is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (b) If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-92; s. 1, ch. 94-100; s. 431, ch. 96-406; s. 1, ch. 2014-177; s. 4, ch. 2014-208; s. 5, ch. 2016-5; s. 20, ch. 2016-6.

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

**The House Oversight, Transparency & Public Management Subcommittee
The Senate Innovation, Industry, and Technology Committee
September 16, 2020**

Open Government Sunset Review Questionnaire
(Data, programs, or supporting documentation that is a trade secret and held by an agency)

PLEASE RETURN THIS QUESTIONNAIRE VIA EMAIL BY OCTOBER 23, 2020, TO BOTH:

Patrick L. “Booter” Imhof
Staff Director
**Senate Committee on Innovation,
Industry, and Technology**
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Chris Villa,
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Section 815.04(3), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption was reenacted to include the new definition of “trade secret” and is subject to the Open Government Sunset Review Act (s. 119.15, F.S.).

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 815.04 AND 812.081, F.S., ARE INCLUDED FOR YOUR CONVENIENCE.

Agency, Organization, or Entity Completing this Questionnaire: [Department of Highway Safety & Motor Vehicles](#)

Name of Person Completing the Questionnaire: [Joseph Gillespie](#)

Title: [Chief of Records Policy & Administration, Office of General Counsel](#)

Telephone Number: [\(850\) 617-3101](#)

E-mail Address: joegillespie@flhsmv.gov

Date that this Questionnaire was Completed: [October 20, 2020](#)

Public Record Exemption under Review

Section 815.04(3), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information.

1. What specific records are affected by the public record exemption?

The exemption is most frequently applied to bids, proposals, and replies submitted in competitive solicitations for Department purchasing and contracts. This applies to procurements for any commodities or contractual services.

2. Whom does the exemption uniquely affect, as opposed to the general public?

The exemption protects the proprietary interests of software developers in their intellectual property and protects the security and integrity of the Department’s computer networks and systems. It also protects all trade secrets submitted to the Department. In practice, this principally affects vendors submitting bids, proposals, or replies in response to the Department’s competitive solicitations.

3. What is the identifiable public purpose or goal of the exemption?

The ordinary meaning of the exemption allows an agency to safeguard the proprietary interests of software developers in their intellectual property and protect the security and integrity of data maintained by the agency in its computer networks and systems. It also shields the proprietary interests of any business submitting a trade secret to an agency, especially vendors submitting bids, proposals, or replies in response to an agency’s competitive solicitations.

4. How does your agency determine if data, programs, or supporting documentation is a trade secret? For example, does the owner of the data, programs, or supporting documentation make a claim of trade secret that is independently evaluated by your agency? Please explain the process.

The Department requests a business that is submitting records containing trade secrets to provide both redacted and unredacted copies of the material. If the Department receives a public records request for unredacted copies (containing information the business claims as a trade secret), the Department would honor the business’s claim of trade-secret status and deny the request. If the public records requester were to challenge the business’s trade-secret claim in a civil enforcement action, the Department would request the court to inspect the information *in camera* and determine whether the information constitutes a trade secret.

5. Can the protected information contained in the records be readily obtained by alternative means? If so, how?

No.

6. Has your agency received a public record request for any such trade secret information? If “yes:”

Yes.

- a. Please describe the types of entities or persons requesting such information and how many requests were received each year since October 1, 2016.

These requests typically emanate from unsuccessful vendors in a competitive solicitation, seeking proprietary information submitted by their competitors.

According to item #23 of General Records Schedule GS1-SL, agencies must maintain correspondence related to public records requests for one fiscal year. Consequently, the Department does not possess records covering the entire subject period. During the period July 1, 2018, to the present, the Department processed the following number of public records request for purchasing documents:

• FY 2018-2019	37 requests
• FY 2019-2020	51 requests
• FY 2020-2021 (to date)	9
• TOTAL	<u>97</u>

The Department’s public records management system does not include fields tracking which exemptions are applied to a particular request. A desk audit of the available requests reveals that approximately 25 percent of the requests sought records that included information claimed as “trade secrets” as defined in § 812.081(1)(c), Fla. Stat.

- b. Was the information released? Please explain.

No. The Department honored a business’s claim of trade-secret status and denied the public records requests for unredacted copies of records containing the claimed trade secrets.

7. The exemption under review provides that the protected software may be shared or exchanged with another public agency. Has the agency shared or exchanged protected software with another public agency? If yes: No.

- a. Under what circumstances did the agency share the exempt information?

N/A.

- b. Does the agency ever need to share the exempt information with any person or entity not specified in statute? If so, who?

N/A.

8. The public record exemption under review defines “trade secret” in accordance with Florida’s criminal statutes. However, Florida’s Uniform Trade Secrets Act also defines “trade secret” in s. 688.002(4), F.S. Would it be more appropriate for the public record exemption under review to use the definition of “trade secret” provided for in the Uniform Trade Secrets Act as opposed to the definition of “trade secret” provided for in Florida’s criminal statutes? Please explain.

The definition of “trade secret” in § 812.081(1)(c), Fla. Stat., is more complex than the definition in § 688.002(4), Fla. Stat. Both terms have a subjective aspect and may require extensive knowledge of the business claiming the trade secret to validate the claim.

The 2016 addition of “financial information” to the definition of “trade secret” in § 812.081(1)(c), Fla. Stat., makes clear the term is more extensive than secrets relating to methods of producing a commodity or contractual service. By shielding commercial information, lists of suppliers, lists of customers, and a business’ level of skill, for example, it appears § 812.081(1)(c), Fla. Stat., protects proprietary secrets relating more generally to a business’ operations.

By comparison, the definition in § 688.002(4), Fla. Stat., is generally less clear in setting out its parameters. Further, § 688.002(4), Fla. Stat., only protects trade secrets that have “independent economic value,” rather than just being “of value.” *Managed Care of North America, Inc. v. Florida Healthy Kids Corp.*, 268 So. 3d 856, 861 (Fla. 1st DCA 2019). Application of this definition could prove more difficult in practice, and use of § 688.002(4), Fla. Stat, instead of § 812.081(1)(c), Fla. Stat., does not appear to be more appropriate in this context.

- a. Has the agency had any difficulties interpreting or applying the exemption? If “yes,” please explain.

Yes, it is unclear whether the 2016 amendment’s addition of “financial information” within the definition of “trade secret” in § 812.081(1)(c), Fla. Stat., was intended to prevent disclosure of pricing submitted by vendors submitting bids, proposals, or replies in response to competitive solicitations.

- b. Is there any case law interpreting the exemption? If “yes,” please explain and provide the appropriate case citations.

Although there are no cases interpreting the ordinary meaning of the exemption (computer data, programs, and supporting documentation), § 815.04(3), Fla. Stat., is discussed in *Seapro Corp. v. Florida Dep’t of Env’tl. Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003), *reh’g den.*, *review den.*, 911

So. 2d 792 (Fla. 2005). *Sevro* holds the exemption applies more broadly to all trade secrets, not merely those relating to computer systems and networks.

9. Are there any pending judicial or administrative disputes or actions related to the exemption? If “yes,” please explain and provide the appropriate judicial or administrative citations. No

10. Does any other state or federal law provide a public record exemption for the information protected by the exemption? If “yes:”

No.

a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.

N/A

b. Please explain which exemption the agency relies upon when responding to a public record request that would include such information.

N/A

c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.

The exemptions in §§ 119.071(1)(f) and 815.04(3), Fla. Stat., comprise related protections for the software, data, and supporting documentation of agency computer systems. Both exemptions incorporate the definition of a “trade secret” from § 812.081(1)(c), Fla. Stat. The exemptions could be merged into a single exemption that holistically expresses an integrated policy for protection of agency computer systems, including respect for proprietary interests in intellectual property and safeguard of the integrity of data and network security of agency computer systems.

11. The exemption provides criminal penalties for persons who commit specified offenses against intellectual property. To the best of your knowledge, has any person been arrested or criminally charged with a violation of the exemption in s. 815.04, F.S., in relation to intellectual property in the custody of the agency. If “yes:”

No.

a. How many such persons have been arrested or charged?

N/A

b. What was the disposition of the criminal case?

N/A

- c. Was intellectual property subject to the exemption destroyed or disclosed to the public.

N/A

12. Does your agency recommend that the Legislature repeal the public record exemption under review, or reenact the public record exemption?

☐ repeal the exemption

☐ reenact the exemption 'as is'

☒ reenact the exemption with the following changes:

- Clarify whether pricing submitted by vendors as part of bids, proposals, or replies in response to agency competitive solicitations are trade secrets.
- Expand the exemption to explicitly exempt login credentials (e.g., usernames and passwords) for agency computer systems.

13. Please provide a brief explanation of your recommendation in question 12.

To mitigate the exploitation of security vulnerabilities in agency computer networks and systems, it is critical to shield the disclosure of agency computer programs, including, including the source code, object code, and supporting documentation.

With regard to agency procurement processes, the 2016 amendment has led to widespread claims by vendors submitting bids, proposals, or replies that their pricing is a trade secret. When pricing for competitive solicitations, as "financial information," is deemed a trade secret, both government watchdogs and vendors who submit unsuccessful responses are restricted in their review of the procurement process, which thereby diminishes the transparency of government contracting. It would greatly assist agencies if the Legislature clarified whether a vendor's pricing constitutes a trade secret.

Although agencies routinely interpret and apply existing exemptions as shielding the disclosure of login credentials (e.g., usernames and passwords) for agency computer systems, more explicit protection for these credentials would obviate any potential an agency could be compelled to release them.

14. Please provide any additional comments regarding the public record exemption under review.

None

815.04 Offenses against intellectual property; public records exemption.—

- (1) A person who willfully, knowingly, and without authorization introduces a computer contaminant or modifies or renders unavailable data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (2) A person who willfully, knowingly, and without authorization destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (3) Data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that resides or exists internal or external to a computer, computer system, computer network, or electronic device is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.
- (4) A person who willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation that is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (5)(a) Except as otherwise provided in this subsection, an offense against intellectual property is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
(b) If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-92; s. 1, ch. 94-100; s. 431, ch. 96-406; s. 1, ch. 2014-177; s. 4, ch. 2014-208; s. 5, ch. 2016-5; s. 20, ch. 2016-6.

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

**The House Oversight, Transparency & Public Management Subcommittee
The Senate Innovation, Industry, and Technology Committee
September 16, 2020**

Open Government Sunset Review Questionnaire
(Data, programs, or supporting documentation that is a trade secret and held by an agency)

PLEASE RETURN THIS QUESTIONNAIRE VIA EMAIL BY OCTOBER 23, 2020, TO BOTH:

Patrick L. “Booter” Imhof
Staff Director
**Senate Committee on Innovation,
Industry, and Technology**
Imhof.Booter@flsenate.gov
Phone: (850) 487-5957

Chris Villa,
Attorney
**House Oversight, Transparency & Public
Management Subcommittee**
Chris.Villa@myfloridahouse.gov
Phone: (850) 717-4890

Section 815.04(3), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption was reenacted to include the new definition of “trade secret” and is subject to the Open Government Sunset Review Act (s. 119.15, F.S.).

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 815.04 AND 812.081, F.S., ARE INCLUDED FOR YOUR CONVENIENCE.

Agency, Organization, or Entity Completing this Questionnaire: Department of Corrections

Name of Person Completing the Questionnaire: Ryan W. Orbe

Title: Assistant General Counsel

Telephone Number: (850)717-3605

E-mail Address: Ryan.Orbe@fdc.myflorida.com

Date that this Questionnaire was Completed: October 22, 2020

Public Record Exemption under Review

Section 815.04(3), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information.

1. What specific records are affected by the public record exemption?

Typically, these exceptions affect documents submitted by prospective vendors, including vendor responses to Requests for Quotes, Invitations to Bid, Requests for Proposals, and Invitations to Negotiate. Vendors must clearly identify any "trade secret" or "proprietary" material when submitting information to the Department.

2. Whom does the exemption uniquely affect, as opposed to the general public?

Typically, the requestors of this information are competitors requesting each other's responses upon the conclusion of the competitive solicitation process.

3. What is the identifiable public purpose or goal of the exemption?

To allow vendors to submit proposals to the state where they can clearly define and describe their offering for consideration, without risking the use their bid response by competitors as an opportunity to access trade secret information.

4. How does your agency determine if data, programs, or supporting documentation is a trade secret? For example, does the owner of the data, programs, or supporting documentation make a claim of trade secret that is independently evaluated by your agency? Please explain the process.

The vendor in their submitted materials marks claims of trade secret information. Vendors are responsible for defending their designation of confidential information in the case of a legal challenge by another party.

5. Can the protected information contained in the records be readily obtained by alternative means? If so, how?

The Department is unaware of how each private company maintains its records, but they are not typically readily available.

6. Has your agency received a public record request for any such trade secret information? If “yes:”

The Department has received requests for documents that include trade secret information, but not specifically for the exempt information. For example, a vendor's response to an ITN

might be requested. The Department would provide a redacted version of the vendor's reply that does not include the trade secret portions of the document.

- a. Please describe the types of entities or persons requesting such information and how many requests were received each year since October 1, 2016.

The Department does not have a database that tracks these requests, nor does the Department track the number of records with this exemption.

- b. Was the information released? Please explain.

The Department does not track this information.

7. The exemption under review provides that the protected software may be shared or exchanged with another public agency. Has the agency shared or exchanged protected software with another public agency? If yes:

No.

- a. Under what circumstances did the agency share the exempt information? **N/A**
 - b. Does the agency ever need to share the exempt information with any person or entity not specified in statute? If so, who? **N/A**
8. The public record exemption under review defines "trade secret" in accordance with Florida's criminal statutes. However, Florida's Uniform Trade Secrets Act also defines "trade secret" in s. 688.002(4), F.S. Would it be more appropriate for the public record exemption under review to use the definition of "trade secret" provided for in the Uniform Trade Secrets Act as opposed to the definition of "trade secret" provided for in Florida's criminal statutes? Please explain.

No, it would not be more appropriate. It would upend years of case law. 812.081, F.S. definition of a "trade secret" has been in use by Chapter 119 since the enactment of 812.081, F.S., in 1988. In order to shift to 688.002(4), F.S., the resulting confusion would be detrimental to the custodians of the public records as their guidance would have altered. The elements for each test do not correspond and 688.002(4) F.S., would require a determination of "reasonableness" that is often hard to define and easy to litigate. As such, 688.002(4), F.S., doesn't encompass the same level of specificity as 812.081, F.S., and this would create confusion for both the custodian and the public.

- a. Has the agency had any difficulties interpreting or applying the exemption? If "yes," please explain.

No, the Department rarely utilizes the trade secret exemption.

- b. Is there any case law interpreting the exemption? If "yes," please explain and provide the

appropriate case citations.

There is extensive case law involving trade secret exemptions in Chapter 119. However, none involve an assertion of the exemption by the Department of Corrections.

These are some of the cases that have been relied on by the Attorney General's Office in advisories concerning trade secrets and public records:

***Sepro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781, 785 (Fla. 1st DCA 2003);**

***Cubic Transportation Systems, Inc. v. Miami-Dade County*, 899 So. 2d 453, 454 (Fla. 3d DCA 2005); and,**

***Seta Corporation of Boca, Inc. v. Office of the Attorney General*, 756 So. 2d 1093 (Fla. 4th DCA 2000).**

9. Are there any pending judicial or administrative disputes or actions related to the exemption? If "yes," please explain and provide the appropriate judicial or administrative citations.

Yes, the Department currently has a small amount of cases that are in litigation that have a trade secret public record exemption component.

10. Does any other state or federal law provide a public record exemption for the information protected by the exemption? If "yes:" **Yes, possibly.**

- a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.

If a sealed bid may involve information pertinent to trade secret software, it would be exempt under section 119.071(1)(b)2, F.S.

If a trade secret is in the litigation strategy or part of memorandum that was prepared in the anticipating of litigation then it would be exempt under section 119.071(1)(d)1, F.S.

Surveillance techniques might involve trade secret software and would be exempt under section 119.071(2)(d), F.S.

Security system plans may involve trade secrets, and would be exempt under section 119.071 (3), F.S.

If the trade secret is also considered a trade secret or information that is commercial or financial from a person under privileged or confidential would be exempt under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(4).

If the trade secret is in the litigation strategy or part of memorandum involving civil litigation in coordination with a Federal agency it would be exempt under FOIA, 5 U.S.C. § 552(5).

If records of information were compiled for federal law enforcement purposes were shared with FDOC and that information had trade secret information, that would be exempted under FOIA, 5 U.S.C. § 552(7).

- b. Please explain which exemption the agency relies upon when responding to a public record request that would include such information.

The Department would utilize any other exemption that would also be applicable. Often this would involve security concerns. Section 119.071(1)(f), F.S., provides a public record exemption for data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, F.S.

- c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.

The Department does not have a significant amount of experience or volume of encounters with this exception to recommend a policy decision.

11. The exemption provides criminal penalties for persons who commit specified offenses against intellectual property. To the best of your knowledge, has any person been arrested or criminally charged with a violation of the exemption in s. 815.04, F.S., in relation to intellectual property in the custody of the agency? If "yes:"

No.

- a. How many such persons have been arrested or charged? **N/A**
- b. What was the disposition of the criminal case? **N/A**
- c. Was intellectual property subject to the exemption destroyed or disclosed to the public?
N/A

No person has been arrested or criminally charged with a violation of the exemption in s. 815.04, F.S., in relation to intellectual property in the custody of the agency.

12. Does your agency recommend that the Legislature repeal the public record exemption under review, or reenact the public record exemption?

☐ repeal the exemption

☒ reenact the exemption 'as is'

☐ reenact the exemption with the following changes:

13. Please provide a brief explanation of your recommendation in question 12.

The exemption has been in place and has not raised concerns.

14. Please provide any additional comments regarding the public record exemption under review.

N/A.

815.04 Offenses against intellectual property; public records exemption.—

- (1) A person who willfully, knowingly, and without authorization introduces a computer contaminant or modifies or renders unavailable data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (2) A person who willfully, knowingly, and without authorization destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (3) Data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that resides or exists internal or external to a computer, computer system, computer network, or electronic device is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.
- (4) A person who willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation that is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (5)(a) Except as otherwise provided in this subsection, an offense against intellectual property is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (b) If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-92; s. 1, ch. 94-100; s. 431, ch. 96-406; s. 1, ch. 2014-177; s. 4, ch. 2014-208; s. 5, ch. 2016-5; s. 20, ch. 2016-6.

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

Section 815.04(3), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information.

**The House Oversight, Transparency & Public Management Subcommittee
The Senate Innovation, Industry, and Technology Committee
September 16, 2020**

**Open Government Sunset Review Questionnaire
(Data, programs, or supporting documentation that is a trade secret and held by an agency)**

PLEASE RETURN THIS QUESTIONNAIRE VIA EMAIL BY OCTOBER 23, 2020, TO BOTH:

**Patrick L. “Booter” Imhof
Staff Director
Senate Committee on Innovation,
Industry, and Technology
Imhof.Booter@flsenate.gov
Phone: (850) 487-5957**

**Chris Villa,
Attorney
House Oversight, Transparency & Public
Management Subcommittee
Chris.Villa@myfloridahouse.gov
Phone: (850) 717-4890**

Section 815.04(3), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption was reenacted to include the new definition of “trade secret” and is subject to the Open Government Sunset Review Act (s. 119.15, F.S.).

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 815.04 AND 812.081, F.S., ARE INCLUDED FOR YOUR CONVENIENCE.

Agency, Organization, or Entity Completing this Questionnaire:

Name of Person Completing the Questionnaire:

Title: Monica Ross

Telephone Number: 850-413-4159

E-mail Address: Monica.Ross@FLOIR.com

Date that this Questionnaire was Completed: 10/23/20

Public Record Exemption under Review

Section 815.04(3), F.S., provides a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information.

1. What specific records are affected by the public record exemption?
Section 815.04(3), F.S. affects any records filed by persons required to submit documents or other information to the Office of Insurance Regulation (“Office”) pursuant to the insurance code or by rule or order of the Office or Financial Service Commission that have been marked “trade secret” prior to the enactment of Section 624.4213, F.S. Additionally, it would affect any trade secret records that are submitted to the Office by any person who is not required by the insurance code to submit such records (e.g. vendors, governmental entities).
2. Whom does the exemption uniquely affect, as opposed to the general public?
The exemption affects insurers or other entities regulated by the Office that filed data or documents prior to the enactment of Section 624.4213, F.S. or potential vendors or governmental entities.
3. What is the identifiable public purpose or goal of the exemption?
The goal of this exemption is to protect information provided to an agency, the disclosure of which would injure the affected business in the marketplace.
4. How does your agency determine if data, programs, or supporting documentation is a trade secret? For example, does the owner of the data, programs, or supporting documentation make a claim of trade secret that is independently evaluated by your agency? Please explain the process.
The Office does not make a determination regarding the validity of a trade secret claim. Section 624.4213, F.S., provides a mechanism for companies to file an action in circuit court seeking a determination whether its data or other information constitutes a trade secret. For documents presented prior to the enactment of Section 624.4213, F.S., or provided by a vendor or other governmental entity, the Office would follow similar procedures to seek a judicial determination that the documents were trade secret.
5. Can the protected information contained in the records be readily obtained by alternative means? If so, how? **When filing documents identified as “trade secret” pursuant to Section 624.4212, F.S., the filing company is required to affirm via affidavit that the information is not publicly available and that it has taken measures to prevent its disclosure. For all other trade secret claims, it would be determined on a case by case basis whether the information is readily obtainable from another source.**

6. Has your agency received a public record request for any such trade secret information? If “yes:” **Yes.**

a. Please describe the types of entities or persons requesting such information and how many requests were received each year since October 1, 2016.

Requests typically come from other authorized insurers or entities seeking to be authorized to do business in Florida, law firms, reporters, and the general public. Due to the manner in which requests are made and tracked, the Office is unable to provide the number of requests for trade secret information.

b. Was the information released? Please explain.

OIR has released trade secret information to other states and federal agencies, the NAIC, and members of supervisory colleges described in s. 628.805, F.S. Most, if not all, of this trade secret information would have been protected under Section 624.4212 and 624.4213, Florid Statutes.

7. The exemption under review provides that the protected software may be shared or exchanged with another public agency. Has the agency shared or exchanged protected software with another public agency? If yes:
No.

a. Under what circumstances did the agency share the exempt information?

b. Does the agency ever need to share the exempt information with any person or entity not specified in statute? If so, who?

8. The public record exemption under review defines “trade secret” in accordance with Florida’s criminal statutes. However, Florida’s Uniform Trade Secrets Act also defines “trade secret” in s. 688.002(4), F.S. Would it be more appropriate for the public record exemption under review to use the definition of “trade secret” provided for in the Uniform Trade Secrets Act as opposed to the definition of “trade secret” provided for in Florida’s criminal statutes? Please explain.

Yes. In the normal course of business, the Office receives data that is identified as “trade secret” pursuant to Section 624.4213, F.S. Those “trade secrets” are considered “proprietary business information” as defined by Section 624.4212, F.S., which references the definition of “trade secret” in Section 688.002, F.S. For data, programs, or supporting documentation that were not filed pursuant to Section 624.4212, F.S. it would allow for consistency and ease of reference if the definition was only in the Uniform Trade Secrets Act.

a. Has the agency had any difficulties interpreting or applying the exemption? If “yes,” please explain. **N/A. The Office has mainly had to apply the trade secret exemptions**

of Sections 624.4212 and 624.4213, F.S.

- b. Is there any case law interpreting the exemption? If “yes,” please explain and provide the appropriate case citations. **Sepro Corp. v. Florida Dept. of Env'tl. Prot., 839 So. 2d 781 (Fla. 1st DCA 2003). The First District Court of Appeals determined that the trade secret exception to statute allowing disclosure of public records applied to all types of records and not to only computer data, programs, or supporting documentation to such data or programs. The court also said that “[t]he trade secret owner who fails to label a trade secret as such, or otherwise to specify in writing upon delivery to a state agency that information which it contends is confidential and exempt under the public records law is not to be disclosed, has not taken measures or made efforts that are reasonable under the circumstances to maintain the information's secrecy.” Id. at 784.**

The Office uses this opinion as guidance for dealing with trade secret documents filed with the Office prior to the enactment of Section 624.4213, Florida Statutes.

9. Are there any pending judicial or administrative disputes or actions related to the exemption? If “yes,” please explain and provide the appropriate judicial or administrative citations.
No.

10. Does any other state or federal law provide a public record exemption for the information protected by the exemption? If “yes:” **Yes.**

- a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects.

Section 624.4212, F.S., protects trade secrets filed with the Office as defined in s. 688.002 which comply with s. 624.4213.

- b. Please explain which exemption the agency relies upon when responding to a public record request that would include such information.

Sections 624.4212 and 624.4213, F.S. For information received prior to the enactment of those statutes, or for information not filed pursuant to the insurance code, the Office would rely on Section 815.04(3), F.S.

- c. Can the public record exemption under review be repealed or merged with the other exemption(s)? Please explain.

The Office does not believe that that this exemption could be repealed or merged with the other sections. The sections listed above pertain only to information the insurance code requires to be filed with the Office. It does not apply to other state agencies and would not cover instance in which the Office enters into an agreement with a company or governmental entity for the use of certain software, programs, or supporting documentation or if the Office has other information that is not covered by the trade secret provisions in the insurance code.

11. The exemption provides criminal penalties for persons who commit specified offenses against intellectual property. To the best of your knowledge, has any person been arrested or criminally charged with a violation of the exemption in s. 815.04, F.S., in relation to intellectual property in the custody of the agency. If "yes:"

No.

- a. How many such persons have been arrested or charged?
- b. What was the disposition of the criminal case?
- c. Was intellectual property subject to the exemption destroyed or disclosed to the public.

12. Does your agency recommend that the Legislature repeal the public record exemption under review, or reenact the public record exemption?

☐ repeal the exemption

☐ reenact the exemption 'as is'

☒ X__ reenact the exemption with the following changes:

Use the definition of "trade secret" provided for in the Uniform Trade Secrets Act as opposed to the definition of "trade secret" provided for in Florida's criminal statutes?

13. Please provide a brief explanation of your recommendation in question 12.

This change will increase consistency and ease of locating applicable definitions of "trade secret."

14. Please provide any additional comments regarding the public record exemption under review.

None.

815.04 Offenses against intellectual property; public records exemption.—

- (1) A person who willfully, knowingly, and without authorization introduces a computer contaminant or modifies or renders unavailable data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (2) A person who willfully, knowingly, and without authorization destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (3) Data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that resides or exists internal or external to a computer, computer system, computer network, or electronic device is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.
- (4) A person who willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation that is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, computer network, or electronic device commits an offense against intellectual property.
- (5)(a) Except as otherwise provided in this subsection, an offense against intellectual property is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
(b) If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-92; s. 1, ch. 94-100; s. 431, ch. 96-406; s. 1, ch. 2014-177; s. 4, ch. 2014-208; s. 5, ch. 2016-5; s. 20, ch. 2016-6.

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

The Senate Innovation, Industry, and Technology Committee
October 21, 2020

Open Government Sunset Review Questionnaire
(Information held by the Department of Business and Professional Regulation)

PLEASE RETURN THIS QUESTIONNAIRE BY NOVEMBER 13, 2020, TO:

Patrick L. “Booter” Imhof
Staff Director
Committee on Innovation, Industry, and
Technology
Imhof.Booter@flsenate.gov
Phone: (850) 487-5957

Section 499.051, F.S., provides a public records exemption for trade secrets (as defined in s. 812.081, F.S.) contained in a complaint relating to compliance with the Florida Drug and Cosmetic Act, or information obtained by the Florida Department of Business and Professional Regulation during the investigation of a complaint. The information that constitutes a trade secret as defined in s. 812.081, F.S., must be maintained as confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution as required under s. 499.051, F.S. In 2016, the Legislature amended the paragraph to be subject to the Open Government Sunset Review Act.

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the provisions of the Open Government Sunset Review Act (s. 119.15, F.S.).

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTION 499.051, AND 812.081 FLORIDA STATUTES, ARE INCLUDED FOR YOUR CONVENIENCE, WITH THE EXEMPTION PROVISION SHOWN IN BOLD TYPE.

Agency or Organization Completing this Questionnaire: *Pharmaceutical Research and Manufacturers of America (PhRMA). PhRMA is a voluntary, nonprofit association representing the nation’s leading research-based pharmaceutical and biotechnology companies.*

Name of Person Completing the Questionnaire: Michael Anway

Title: Senior Director, State Advocacy

Telephone Number: 202-552-9916

E-mail Address: Manway@phrma.org

Date that this Questionnaire was Completed: 11/12/20

1. Have agents from the Department of Business and Professional or the Florida Department of Law Enforcement inspected, monitored, or investigated your establishment pursuant to section 499.051 or chapter 499, Florida Statutes?

No.

If the answer is no, proceed to question # 5.

2. If so, has any information that the agencies obtained been a trade secret as defined in section 812.081, Florida Statutes?
3. If the answer to question #2 is yes, what type of information was considered to be a trade secret and how was it identified as a trade secret?
4. If the answer to question #2 is yes, as far as you know, have the agencies maintained the information as confidential and exempt from section 119.07(1), Florida Statutes and section 24(a) of Article I of the Florida Constitution?
5. In your opinion, what is the identifiable public purpose or goal of the exemption?

The identifiable public purpose of the exemption is to ensure that trade secrets obtained by the Department of Business and Professional Regulation (DBPR) or Department of Law Enforcement (DLE) during the inspection or investigation of a permitted establishment (including drug manufacturers, see s. 499.01(1)(a), F.S.) is not susceptible to disclosure under section 119.07(1), Florida Statutes or section 24(a) of Article I of the Florida Constitution. The exemption is critical as matter of public policy, for at least two reasons:

1) Trade secrets are an integral part of the pharmaceutical business. Pharmaceutical manufacturers spend billions of dollars each year investigating and developing new life-saving and life-enhancing drugs for patients, including researching vaccines to combat COVID-19 and treatments to mitigate its effects. Pharmaceutical manufacturers develop drugs, adjust their pricing, and market their products using proprietary methods that aim to balance competing concerns, including promoting market access to life-changing medicines while generating the capital necessary to enable continued scientific innovation. Their substantial investments in investigational medicines rely on strong legal protections for their intellectual property—including trade secrets—which allow manufacturers to compete based on quality, price, and market access. If trade secrets were subject to public inspection during or following an investigation by either Department, manufacturers could risk losing their competitive edge with respect to the disclosed information, inhibiting their ability to innovate or compete.

Every state in the nation has enacted protections for trade secrets, and Florida is no exception. Congress, too, has recognized that federal protection is necessary to “incentivize future innovation while protecting and encouraging the creation of American jobs.” (Sen. Rep. No. 114-220, 2d Sess. p. 3 (2016)). Congress accordingly enacted the Defend Trade Secrets Act of 2016 (DTSA), which authorizes criminal and civil proceedings in federal court to prevent trade-secret misappropriation. (18 U.S.C. § 1831 et seq.). Florida should not impede the pharmaceutical manufacturing sector’s ability to innovate and produce vital drugs—thereby undermining the efficacy of the nationwide healthcare market—by failing to reenact section 499.051, Florida Statutes.

2) *The trade secret exemption enacted in section 499.051 furthers another public policy purpose: shielding manufacturers from being economically disadvantaged solely because of an investigation or inquiry that led the department to receive confidential information, regardless of whether that investigation uncovers any violations. A manufacturer should not be penalized for complying with an investigation by risking exposure of valuable trade secrets in its efforts to cooperate. The exemption ensures that manufacturers can provide DPBR or DLE officials with the materials they seek, without fear that disclosure to the authorities will risk exposure of their proprietary information—exposure that would be contrary to Florida’s interest in fostering a robust healthcare market.*

6. Do you know if the information contained in the records be readily obtained by alternative means? If so, how?

Whether any of the proprietary materials turned over as part of a department’s investigation might be readily obtained by alternative means is a case-specific inquiry.

7. Do you know if the records are protected by other public record exemptions?

PhRMA is not aware of any other state public record exemption that categorically protects all information covered by section 499.051. Whether particular records covered by this section are protected by other public record exemptions will be a case-specific inquiry. Some records could be covered by other exemptions, such as section 499.0121(7)(b), Florida Statutes, which creates a public records exemption for trade secrets contained in the portions of the written list provided to the DBPR of wholesale distributors and manufacturers from whom the wholesale distributor purchases prescription drugs; or section 499.012(3)(c), Florida Statutes, which exempts trade-secret information submitted by an applicant on an application for a permit to manufacture or distribute prescription drugs.

8. If the answer to question #7 is yes, do you believe it would be appropriate to merge the public record exemptions?

Because the potentially applicable exemptions do not fully overlap, PhRMA does not believe that merger of these exemptions is appropriate unless the merger were purely ministerial (e.g., the consolidation of multiple exemptions in a single statutory section).

9. In your experience with the department, have there been any difficulties interpreting or applying the exemption?

Because PhRMA is an advocacy organization and not itself a pharmaceutical manufacturer, PhRMA does not have direct experience interpreting or applying the exemption.

10. Have you been involved in any litigation regarding the exemption?

No.

11. Are you involved in any pending judicial or administrative dispute or action related to the exemption?

No.

12. Do you know of any other federal law to protect this type of information? If so:

- a. Please provide the specific federal citation for each exemption and specify the types of information the federal law protects.

The disclosure of trade secret information protected by section 499.051 would likely violate two provisions of federal law. Section 499.051's exemption of trade secret information from public disclosure therefore serves the important function of ensuring that state officials are complying with federal law.

First, the Takings Clause of the Fifth Amendment to the U.S. Constitution prevents public officials from taking or destroying the value of private property without providing adequate compensation. The U.S. Supreme Court has held that trade secrets are a form of private property protected by the Takings Clause. See Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984). And courts have properly recognized that because the value of a trade secret lies in its secrecy, the disclosure of a trade secret to the public immediately destroys the value of the property. Thus, when state laws permit the disclosure or publication of trade secrets, those disclosures and publications are properly considered takings, and the state laws that authorize them can be challenged through lawsuits asserting violations of the Takings Clause.

Second, the federal Defend Trade Secrets Act (DTSA) prohibits the unauthorized disclosure of trade secrets and thereby preempts state laws that purport to authorize such disclosures. The DTSA prohibits "misappropriation," which, as relevant here, includes the "disclosure or use of a trade secret of another without express or implied consent by a person who ... at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was ... derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret." 18 U.S.C. § 1839(5)(B). State laws that purport to authorize the disclosure of trade secrets therefore authorize misappropriations, which are violations of federal law. See 18 U.S.C. § 1836(a). And under the U.S. Constitution's Supremacy Clause, state laws that conflict with federal laws are preempted—i.e., they are null and void. Thus, by protecting manufacturers' trade-secret information from disclosure, section 499.051 would help to further compliance with federal statutory law.

PhRMA notes that, although these two provisions of federal law could provide PhRMA's members with legal remedies to prevent the unauthorized disclosure of manufacturers' trade secrets, the State's existing public records exemptions, including section 499.051, are more appropriate safeguards from a public policy perspective because they provide both manufacturers and the State with better certainty about what information may be subject to public disclosure, without requiring resort to federal litigation.

- b. If there is another exemption, do you know which exemption the department relies upon when responding to a public records request that would include such information?

PhRMA is not aware of the department having relied on the Takings Clause or the DTSA when responding to public records requests that would include information protected by section 499.051.

13. Do you recommend that the Legislature repeal the public record exemption, reenact the public record exemption as is, or reenact the public record exemption with changes? Please explain.

PhRMA respectfully suggests that the Legislature consider adopting a public record exemption that covers all confidential and proprietary business information in the State or local government's possession, rather than enacting specific carve-outs for confidential information depending on how that information is obtained. Trade secrets are valuable intellectual property that should be presumptively protected from disclosure as a matter of due course. In enacting a comprehensive public records exemption for trade secrets, the Legislature should adopt safeguards that will help ensure that manufacturers' sensitive information is not disseminated, including (but not limited to):

- *Providing manufacturers with notice within 30 days of receipt of a public records request that information sought under section 119.07(1), Florida Statutes, or section 24(a) of Article I of the Florida Constitution may contain trade secrets.*
- *Providing manufacturers with an opportunity to file written objections to any such requests for information and to explain why the information sought should be protected.*
- *If the authority determines that information labeled a trade secret by the manufacturer is not subject to an exemption, providing manufacturers with at least a 30-day grace period to seek judicial relief before releasing the contested materials in response to the public records act request.*

If the Legislature declines to make the suggested comprehensive changes to the public records act, it should reenact the public records exemption described in section 449.051 with the safeguards suggested above.

14. Do you have any additional comments regarding the public record exemption under review?

PhRMA appreciates the opportunity to comment on the public record exemption under review, and is available to discuss any aspects of the above questionnaire if that would be helpful to the Senate Innovation, Industry, and Technology Committee.

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 during business hours for the purpose of enforcing this chapter, 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 chapter and rules adopted under this chapter regarding any drug, device, or cosmetic.
- (3) Any application for a permit or product registration or for renewal of such permit or registration made pursuant to this chapter and rules adopted under this chapter constitutes permission for any entry or inspection of the premises in order to verify compliance with this chapter 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. 499.831 and rules adopted under those sections 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 and the rules adopted by the department to administer this chapter, in order to discover, investigate, and determine the existence of compliance, or to elicit, receive, respond to, and resolve complaints and violations.
- (5) The authority to inspect under this section includes the authority to access, review, and copy any and all financial documents related to the activity of manufacturing, repackaging, or distributing prescription drugs.
- (6) The authority to inspect under this section includes the authority to secure:
 - (a) Samples or specimens of any drug, device, or cosmetic; or
 - (b) Such other evidence as is needed for any action to enforce this part and the rules adopted under this part.
- (7)
 - (a) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation and the enforcement action are completed.
 - (b) Information that constitutes a trade secret, as defined in s. 812.081, contained in the complaint or obtained by the department pursuant to the investigation must remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution as long as the information is held by the department. This paragraph is subject to the Open**

Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) This subsection does not prohibit the department from using such information for regulatory or enforcement proceedings under this chapter or from providing such information to any law enforcement agency or any other regulatory agency. However, the receiving agency shall keep such records confidential and exempt as provided in this subsection.

History.—s. 34, ch. 82-225; s. 26, ch. 82-402; s. 1, ch. 83-265; s. 5, ch. 86-133; s. 11, ch. 88-159; ss. 37, 52, ch. 92-69; s. 199, ch. 94-218; ss. 3, 5, 8, ch. 94-309; s. 7, ch. 95-366; s. 332, ch. 96-406; s. 240, ch. 99-8; s. 62, ch. 2003-1; s. 21, ch. 2003-155; s. 26, ch. 2007-6; s. 29, ch. 2008-207; s. 8, ch. 2014-89; s. 11, ch. 2016-6; s. 13, ch. 2016-212; s. 4, ch. 2017-51.

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) “Article” means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) “Representing” means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) “Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) “Copy” means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(3) In a prosecution for a violation of this section, the fact that the person so charged returned or intended to return the article so stolen, embezzled, or copied is not a defense.

History.—ss. 1, 2, 3, ch. 74-136; s. 1, ch. 85-34; s. 1240, ch. 97-102; s. 1, ch. 2016-5.

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: SPB 7030

INTRODUCER: Regulated Industries Committee

SUBJECT: OGSR/Trade Secrets/Department of Business and Professional Regulation

DATE: February 17, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kraemer	Imhof		RI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7030 amends s. 499.931, F.S., to remove the scheduled repeal of a public records exemption for information required to be submitted to the Department of Business and Professional Regulation (DBPR) that is designated by a distributor of medical gas as a trade secret. Medical gas is a liquid or vaporized gas that is a prescription drug. Affected parties are medical gas wholesale distributors, medical gas manufacturers, and medical oxygen retail establishments, including applicants for such licensing.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, qualified trade secrets remain exempt from public disclosure.

The bill is effective October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁷

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁸
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.

²⁸ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,²⁹ and the right to recover damages for the misappropriation of a trade secret.³⁰ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³¹

Section 688.002(4), F.S., defines the term "trade secret" to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of

²⁹ Section 688.003, F.S.

³⁰ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³¹ See Section 688.008, F.S.

advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has “independent economic value,” rather than just be “of value,” as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt “trade secrets” as defined in s. 688.002(4), F.S., or include “trade secrets” as defined in s. 688.002(4), F.S., within the meaning of the term “proprietary confidential information” or “proprietary business information” when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.

- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.
- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.

- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.
- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³² In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³³

Open Government Sunset Review Questionnaires

In November 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to various entities identified by the Department of Business and Professional Regulation as permitted medical gas manufacturers and medical gas wholesale distributors. Representatives of the Compressed Gas Association,³⁴ and the Gases and Welding Distributors Association,³⁵ (the associations) responded to the questionnaire on behalf of their members, and staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

According to the associations, which represent manufacturers, distributors, suppliers and transporters of gases in the industrial, medical, and food gases industry, as well as the welding equipment and industrial gas industry, the exemption allows applicants and permit holders to

³² *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³³ *Id.*

³⁴ The Compressed Gas Association (CGA) is an accredited standards-developing organization dedicated to the development and promotion of safety standards and safe practices in the industrial, medical, and food gases industry, representing over 130 member companies — manufacturers, distributors, suppliers, and transporters of gases, cryogenic liquids, and related products and services. CGA develops technical specifications, safety standards, and training and educational materials, and works with government agencies to formulate responsible regulations and standards and to promote compliance with these regulations and standards. See [About Us - Compressed Gas Association \(cganet.com\)](https://www.cganet.com) (last visited Feb. 11, 2021).

³⁵ The CGA's sister organization is the Gases and Welding Distributors Association (GAWDA), formerly the National Welding Supply Association. GAWDA represents over 500 small to very large welding equipment and industrial gas distributors as well as several hundred manufacturers, suppliers, and service providers to the welding and industrial gas industry. GAWDA's mission is to promote the safe operation and economic vitality of distributors of industrial gases and related welding equipment and supplies. See [Frequently Asked Questions - GAWDA](https://www.gawda.com) (last visited Feb. 11, 2021).

share important information with the state in a manner that does not cause irreparable financial harm.³⁶

The associations noted the following trade secret information is required to be submitted to DBPR by their members, as applicants or as permit holders inspected by DBPR:

- List of medical gas customers;
- Medical gas customer shipping documents that may contain pricing and volume information;
- Medical gas receipt documents;
- Medical gas pricing information;
- Documents associated with specific customer names and addresses;
- Billing documents; and
- The name, position/title, social security number, date of birth and address of each owner, partner, member, manager, officer, director, chief executive, or other person who directly or indirectly controls the operation of the business entity, as applicable.³⁷

The questionnaire asked if the exemption in s. 499.931, F.S., should be repealed, and the associations strongly recommended the exemption be reenacted, without the need to reenact the protection of the above trade secret information every five years.³⁸

Trade Secrets

For purposes of the exemption in s. 499.931, F.S., the term “trade secrets,” as defined in s. 812.081(1)(c), F.S., means information for which an owner “takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes.” Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.³⁹

Under Section 812.081(1)(c), F.S., the term “trade secret” includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

In 2016, when the term “trade secret” was expanded to include the term “financial information,”⁴⁰ s. 499.931, F.S., was revised to incorporate that expanded meaning, and made subject to repeal on October 2, 2021 unless saved through reenactment by the Legislature.⁴¹

³⁶ See Response by CGA and GAWDA to Open Government Sunset Review Questionnaire, at p. 3 (Dec. 9, 2020) (on file with the Senate Committee on Regulated Industries).

³⁷ *Id.*

³⁸ *Id.* at p. 4.

³⁹ Section 812.081(1)(c), F.S.

⁴⁰ Ch. 2016-5, Laws of Fla.

⁴¹ See Ch. 2016-6, s. 12, Laws of Fla.

III. Effect of Proposed Changes:

The bill reenacts the exemption for qualified trade secrets from public disclosure in s. 499.931, F.S., for a trade secret required to be submitted as part of the permitting or renewal process for medical gas wholesale distributors, medical gas manufacturers, and medical oxygen retail establishments.

The bill reenacts the exemption by removing the repeal date of October 2, 2021 in current law.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 s. 499.931 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.

FOR CONSIDERATION By the Committee on Regulated Industries

580-01147-21

20217030pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 499.931, F.S., which relates to an exemption from public records requirements for trade secrets contained in certain information submitted to the Department of Business and Professional Regulation as required by specified provisions relating to medical gas; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 499.931, Florida Statutes, is amended 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 and designated as a trade secret by an applicant or permitholder must be maintained as required under s. 499.051. ~~This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2021.

December 9, 2020

Patrick L. "Booter" Imhof
Staff Director
Florida Senate Innovation, Industry, and Technology Committee
404 S. Monroe St.
525 Knott Building
Tallahassee, Florida 32399-1100

E-mail: Imhof.Booter@flsenate.gov

RE: Open Government Sunset Review Questionnaire

Dear Mr. Imhof

On 13 November 2020, the Compressed Gas Association (CGA) was advised by one of its members that the Florida Senate Innovation, Industry, and Technology Committee was seeking input from industry regarding the public record exemption for trade secrets found in Section 499.931 of the Florida Statute. That Statute stands repealed on 2 October 2021, unless reviewed and saved from repeal through reenactment by the Legislature under the provisions of the Open Government Sunset Review Act (s. 119.15, F.S.). This letter and the responses to specific questions in Attachment I, reflects CGA's and our sister organization, the Gases and Welding Distributors Association's (GAWDA) concern for the "sunset" repeal, and our support for reenactment of said legislation. Currently trade secret information is provided to the Department of Business and Professional Regulation (DBPR) through information submitted in applications or by permit holders. Trade secret information is also obtained by DBPR through inspections under Part III (Medical Gas) of chapter 499, F.S., the Florida Drug and Cosmetic Act.

CGA, founded in 1913, is an ANSI-accredited standards developing organization that is dedicated to the development and promotion of safety standards and safe practices in the industrial, medical, and food gases industry. CGA represents over 120 member companies in all facets of the industry — manufacturers, distributors, suppliers, and transporters of gases, cryogenic liquids, and related products and services. Through a committee system, CGA develops technical specifications, safety standards, and training and educational materials, and works with government agencies to formulate responsible regulations and standards and to promote compliance with these regulations and standards.

GAWDA, founded in 1946, is dedicated to the safe operations and economic vitality of independent distributors of industrial and medical gases and equipment. It represents over 450 member companies and provides them with compliance assistance and guidance directly through internal consultants. It is also very active in providing training and educational materials that promote safe operations and CGMP compliance. GAWDA participates actively with the CGA and its activities to create and promote responsible regulations and standards for the industry.

As indicated on the attachment in response to question 1, one very common DBPR inspectional activity is to ascertain compliance with Florida statutes by requesting medical gas permit holder facilities to provide a list of medical gas customers that they service out of a location. Alternatively, actual shipping documents will be provided that may contain customer names and addresses, pricing, and volume information. One member has indicated that specific sales and billing information was requested. It is our understanding that DBPR may use this information to assure that the customers themselves are holders of appropriate permits to receive medical gases and to verify that our facilities are complying with the requirement to provide product only to permitted customers. This, as indicated in F.S. 812.081(c) is either a direct "trade secret" (e.g., list of customers) or commercial information providing financial details. This information is required to be identified by our members as "trade secret". Should the requirement for DBPR to maintain this information as confidential be repealed via sunset, it could do our members obvious irreparable business harm. As indicated in our response to question 1 in the attached, there are other specific pieces of information that we consider "trade secret" currently required to be provided to DBPR that must remain confidential.

Patrick L. "Booter" Imhof
Florida Senate Innovation, Industry, and Technology Committee
December 9, 2020
Page 2 of 4

Please see Attachment I that provides answers to most of your questions. We did not respond to question 6 because of our answer to question 5 and we did not respond to questions 10 a and b, because of our answer to the main question.

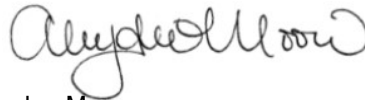
In conclusion, although we fully understand DBPR's need to obtain certain trade secret information, CGA and GAWDA respectfully and strongly request the Florida Legislature reenact the current public record exemption as indicated in our attached response to question 11 and prohibit DBPR, or any other state agency, from disclosing our members' trade secret information, currently in DBPR files or that is obtained in the future.

Should you have any questions with our responses or any other issues that impact medical gas manufacturing and distribution in and into the State of Florida, please do not hesitate to contact John Willenbrock, Technical Manager, at jwillenbrock@cganet.com.

Regards,

A handwritten signature in black ink, appearing to read "Richard Gottwald", with a long horizontal line extending from the end of the signature.

Richard Gottwald
President and CEO
Compressed Gas Association

A handwritten signature in black ink, appearing to read "Abydee Moore", written in a cursive style.

Abydee Moore
President
Gases and Welding Distributors Association

ATTACHMENT

CC Mary Kraemer, Chief Attorney, Senate Innovation, Industry, and Technology Committee
Kraemer.Mary@flsenate.gov

ATTACHMENT I

1. What portions of the information required to be submitted by **CGA and GAWDA members** to the department as an applicant or permit holder under part III (Medical Gas) of ch. 499, F.S. are considered to be trade secrets exempted under this provision?

ANSWER: The following information is required to be provided by CGA and GAWDA members to DBPR either as an applicant or through inspection as a permit holder, and we consider this information to be trade secret:

- list of medical gas customers;
- medical gas customer shipping documents that may contain pricing and volume information;
- medical gas receipt documents;
- medical gas pricing information;
- documents associated with specific customer names and addresses;
- billing documents; and
- the name, position/title, social security number, date of birth and address of each owner, partner, member, manager, officer, director, chief executive, or other person who directly or indirectly controls the operation of the business entity, as applicable.

2. How do **CGA and GAWDA members** identify for the department which information is a trade secret? Please explain the process.

ANSWER: CGA and GAWDA members ascertain what items requested by DBPR are "trade secret" based on the items requested and our member's individual understanding of the definition provided in F.S. 812.081(c). During inspection, DBPR personnel have indicated to our members various methods to identify which information is "trade secret". In some cases, they have indicated that every document needed to be identified as "Confidential" or "Trade Secret", either handwritten or by stamp. In other cases, a cover letter identifying all information contained in a packet of documents, was "confidential" or "trade secret" was sufficient.

3. In **CGA and GAWDA members** opinion, what is the identifiable public purpose or goal of the exemption?

ANSWER: Based on our review of the information provided, we believe the purpose of the exemption is to prevent trade secret information from being disclosed publicly that, in turn, could cause irreparable financial harm to the firm providing the information. The benefit of the exemption is that it allows applicants or permit holders to share important information with the state.

4. Do **CGA and GAWDA members** know if the information contained in the records be readily obtained by alternative means? If so, how?

ANSWER: CGA and GADWA are not aware of any alternative means to obtain the information required by DBPR. We also believe that competitors could not readily obtain this information if DBPR maintains this information as confidential.

5. Do **CGA and GAWDA members** know if the records are protected by other public record exemptions?

ANSWER: To CGA and GAWDA's knowledge, the records that are currently required to be provided to DBPR under Florida Statute that are trade secrets as defined 812.081, F.S. are not protected by other public record exemptions. Because the answer to this question is that we are unaware of other exemptions we are not answering question 6.

6. If the answer to question #5 is yes, do you believe it would be appropriate to merge the public record exemptions?

7. In **CGA and GAWDA members** experience with the department (**DBPR**), have there been any difficulties interpreting or applying the exemption?

ANSWER: CGA and GAWDA members, in cooperation with DBPR, have not experienced any situations where trade secret information has been released when our members have marked documents as "trade secret" or "confidential".

8. Have **CGA and GAWDA members** been involved in any litigation regarding the exemption?

ANSWER: CGA and GAWDA are unaware of any litigation regarding the exemption.

9. Are **CGA and GAWDA members** involved in any pending judicial or administrative dispute or action related to the exemption?

ANSWER: CGA and GAWDA are unaware of any pending judicial or administrative dispute or action related to the exemption.

10. Do **CGA and GAWDA members** know of any other federal law to protect this type of information? If so:

- a. Please provide the specific federal citation for each exemption and specify the types of information the federal law protects.
- b. If there is another exemption, do you know which exemption the department relies upon when responding to a public records request that would include such information?

ANSWER: CGA and GAWDA are unaware of any other federal law that would protect our members from the release of the information that is required to be provided to DBPR under Florida Law. We have not answered 10.a., and 10.b requesting specific citations/exemptions.

11. Do **CGA and GAWDA members** recommend that the Legislature repeal the public record exemption, reenact the public record exemption as is, or reenact the public record exemption with changes? Please explain.

ANSWER: CGA and GAWDA recommend reenacting the public record exemption with changes in such a manner that will not require the Legislature to periodically reenact the exemption every 5 years. How this is accomplished is left to the appropriate legislative language. However, we remain available for further discussion if warranted. Our proposal to eliminate the requirement for reenactment is based on a concern that disclosing trade secret information would cause injury to our members in the marketplace.

12. Do **CGA and GAWDA members** have any additional comments regarding the public record exemption under review?

ANSWER: Should the Florida Senate Innovation, Industry, and Technology Committee have any questions with our responses or any other issues that impact medical gas manufacturing and distribution in and into the State of Florida, please do not hesitate to contact John Willenbrock, Technical Manager, at jwillenbrock@cganet.com.

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: SPB 7026

INTRODUCER: Regulated Industries Committee

SUBJECT: OGSR/Florida State Boxing Commission

DATE: February 17, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Oxamendi</u>	<u>Imhof</u>	_____	RI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7026 amends s. 548.062, F.S., to remove the scheduled repeal of a public records exemption for proprietary confidential business information provided by a promoter to the Florida State Boxing Commission (commission) or through an audit of the promoter's books and records pursuant to s. 548.06, F.S.

This public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, qualified trade secrets remain confidential and exempt from public disclosure.

The bill is effective October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁷

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 119.071(1)(f), F.S., exempts from public records requirements in s. 119.07(1), F.S., data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret, as defined in s. 812.081, F.S., and agency-produced data processing software that is sensitive.
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁸
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.

²⁸ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. 85-62 (1985).

- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,²⁹ and the right to recover damages for the misappropriation of a trade secret.³⁰ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³¹

Section 688.002(4), F.S., defines the term "trade secret" to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

²⁹ Section 688.003, F.S.

³⁰ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³¹ See Section 688.008, F.S.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of “trade secret” in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has “independent economic value,” rather than just be “of value,” as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt “trade secrets” as defined in s. 688.002(4), F.S., or include “trade secrets” as defined in s. 688.002(4), F.S., within the meaning of the term “proprietary confidential information” or “proprietary business information” when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.

- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.
- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.
- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.

- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.
- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.
- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³² In *Sepero v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³³

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department).

Section 548.006(3), F.S., provides the commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held in this state must meet the requirements of ch. 548, F.S., and the rules adopted by the commission for holding the match.

The commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.³⁴ Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.³⁵ This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Section 548.002(20), F.S., defines the term "promoter" to mean:

³² *Sepero v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³³ *Id.*

³⁴ Section 548.006(3), F.S.

³⁵ Section 548.002(2), F.S.

any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

Reporting and Tax Requirement

Within seventy-two hours after a match, the promoter of that match must file a written report with the commission.³⁶ The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.³⁷ Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term “gross receipts” includes:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;
- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.³⁸

According to the department, the current definition of “gross receipts” has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.³⁹

Concessionaire must also file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.⁴⁰

Any written report that must be filed with the commission and postmarked within 72 hours after the conclusion of the match with an additional 5 days allowed for mailing.⁴¹ According to the department, the report is required to enable the commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.

³⁶ Section 548.06(1), F.S.

³⁷ *Id.*

³⁸ Section 548.06(1), F.S.

³⁹ Section 548.06(2), F.S.

⁴⁰ Section 548.06(3), F.S.

⁴¹ Section 548.06(4), F.S.

Section 548.015, F.S., requires that a concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the commission. The security is required before licensure, license renewal, or before a match.

These written reports must be accompanied with a tax payment in the amount of 5 percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event.⁴²

Public Records Exemption for a Promoter's Books and Records

Section 548.062, F.S., provides a public records exemption for proprietary confidential business provided by a promoter to the commission or obtained by the commission through an audit of the promoter's books and records under s. 548.06, F.S.⁴³

Under s. 548.062, F.S., proprietary confidential information means information that:

- Is owned or controlled by the promoter;
- The promoter intends to be and treats as private;
- If disclosed, would cause harm to the promoter or its business operations;
- Has not been disclosed, except for any disclosure pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information not be released to the public.

The information protected also includes:

- The number of ticket sales for a match;
- The amount of gross receipts after a match;
- A trade secret, as defined in s. 688.002, F.S.;
- Business plans;
- Internal auditing controls and reports of internal auditors; or
- Reports of external auditors.

This public records exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

Open Government Sunset Review Questionnaires

In August 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to the commission and to approximately 50 promoters. The commission and one promoter responded to the questionnaire. Staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

In its response to the questionnaire, the commission noted that public records requests for information provided to the commission by promoters are common, and that such requests are

⁴² Section 548.06(5), F.S.

⁴³ This exemption was enacted in ch. 2014-129, Laws of Fla., and amended by ch. 2016-21, Laws of Fla.

typically made by reporters and competitors. The commission has relied on the exemption in s. 548.062, F.S., to deny such requests.

The commission noted that it has not conducted an audit of any promoter since July 1, 2016. Therefore, it has not acquired any information that is subject to the exemption from promoters through an audit.

The commission recommended that the exemption in s. 548.062, F.S., should be reenacted.⁴⁴

III. Effect of Proposed Changes:

The bill amends s. 548.062, F.S., to remove the scheduled repeal of a public records exemption for proprietary confidential business information provided by a promoter to the Florida State Boxing Commission (commission) or through an audit of the promoter's books and records pursuant to s. 548.06, F.S.

This public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, proprietary confidential information remain confidential and exempt from public disclosure.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

⁴⁴ See *Open Government Sunset Review Questionnaire* response from the Florida Boxing Commission on file with the Senate Committee on Regulated Industries.

The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 s. 548.062 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Regulated Industries

580-01516-21

20217026pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 548.062, F.S., relating to an exemption from public records requirements for proprietary confidential business information obtained through an audit of a promoter's books and records or provided by a promoter to the Florida State Boxing Commission; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 548.062, Florida Statutes, is amended to read:

548.062 Public records exemption.—

(1) As used in this section, the term "proprietary confidential business information" means information that:

(a) Is owned or controlled by the promoter;

(b) The promoter intends to be and treats as private;

(c) If disclosed, would cause harm to the promoter or its business operations;

(d) Has not been disclosed, except for any disclosure pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information not be released to the public; and

(e) Concerns any of the following:

1. The number of ticket sales for a match;

2. The amount of gross receipts after a match;

3. A trade secret, as defined in s. 688.002;

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4. Business plans;

5. Internal auditing controls and reports of internal auditors; or

6. Reports of external auditors.

(2) Proprietary confidential business information provided by a promoter to the commission or obtained by the commission through an audit of the promoter's books and records pursuant to s. 548.06 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2021.

Page 2 of 2

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**The Senate Innovation, Industry, and Technology Committee
August 13, 2020**

**Open Government Sunset Review Questionnaire
(Information held by the Florida State Boxing Commission)**

**PLEASE RETURN THIS QUESTIONNAIRE VIA EMAIL BY SEPTEMBER 21, 2020,
TO:**

**Patrick L. "Booter" Imhof
Staff Director
Committee on Innovation, Industry, and
Technology
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In 2014, the Legislature enacted s. 548.062, F.S., to provide a public records exemption for proprietary confidential business information provided by a promoter to the Florida State Boxing Commission (commission) or through an audit of the promoter's books and records pursuant to s. 548.06, F.S.

This public record exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (s. 119.15, F.S.). Under this section, the Legislature is required to review each exemption under specified considerations.

**TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF
THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING
QUESTIONS. A COPY OF SECTION 548.062, FLORIDA STATUTES, IS INCLUDED
FOR YOUR CONVENIENCE.**

Agency or Organization Completing this Questionnaire: Florida Boxing Commission

Name of Person Completing the Questionnaire:

Title:

Telephone Number:

E-mail Address:

Date that this Questionnaire was Completed:

I. Promoter Audits

- a. How many audits of promoters has the commission conducted each year since July 1, 2016? **Zero**
- b. How many of the audits conducted each year since July 1, 2016 involved information or records that were subject to the public records exemption in s. 548.062, F.S.? **N/A**

II. Public Record Exemption under Review

1. Section 548.062, F.S., provides a public record exemption for information held by the commission.
 - a. What specific records are affected by the public record exemption? **Ticket sales/prices, gate receipts, trade secrets, business plans and auditors reports.**
 - b. Whom does the exemption uniquely affect, as opposed to the general public? **Promoters**
 - c. What is the identifiable public purpose or goal of the exemption? **This exemption prevents public disclosure of private business information. Release of private business information would hurt promoters and business investments in our state.**
 - d. Can the information contained in the records be readily obtained by alternative means? If so, how? **No. The promoter would have to be willing to release their private information to the public.**
 - e. Is the record protected by another exemption? **No**
 - f. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge exemptions? **No**
 - g. Has your agency received a public record request for any such information? **Yes, requests for this information are common.**
 - i. If "yes," please describe the types of entities or persons requesting such information and how many requests were received each year during that period. **Usually reporters and competitors want this information.**
 - ii. If "yes," was the information released? Please explain. **We do not release the requested information and cite this exemption.**
 - h. Has your agency received any public complaints regarding the exemption? If so, how many complaints and what were the substance of the complaints? **No**
2. There is a distinction between records that are made "exempt" and records that are made "confidential and exempt." A record classified as "exempt" from public disclosure may be

disclosed under certain circumstances. If the Legislature designates a record as "confidential and exempt" from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated by statute.

The exemption under review provides that such information is confidential and exempt from public record requirements. As such, the records custodian for the commission may only release the confidential and exempt information to the persons or entities specifically designated by statute. Section 548.062(2), F.S., authorizes such record to be disclosed to another government entity in the performance of its duties and responsibilities. Has the commission released the confidential and exempt information?

If yes: **No**

- a. Under what circumstances did the commission release the confidential and exempt information (e.g., to another governmental entity in the furtherance of its duties and responsibilities)? **N/A**
- b. Does the commission ever need to share the confidential and exempt information with any person or entity not specified in statute? If so, who? **N/A**
3. Has the commission had any difficulties interpreting or applying the exemption? **No**
4. Is there any case law interpreting the exemption? **No**
5. Are there any pending judicial or administrative disputes or actions related to the exemption? **No**
6. Does any other state or federal law protect the proprietary confidential business information relating to promoters pursuant to s. 548.062, Florida Statutes? If "yes": **No**
 - a. Please provide the specific state or federal citation for each exemption and specify the types of information each state or federal law protects. **N/A**
 - b. Please explain which exemption the commission relies upon when responding to a public record request that would include such information. **N/A**
 - c. Can the public record exemption be repealed or merged with the other exemption(s)? Please explain. **N/A**
7. Does your agency use any rules to implement the exemption? **No** If yes, please identify the applicable rules and statutory basis for the rules. If no, does your agency recommend that the Legislature authorize additional rulemaking authority to the agency? **No**
8. Does your agency recommend that the Legislature repeal the public record exemption, or reenact the public record exemption?
☐ repeal the exemption
☒ reenact the exemption 'as is'

_____ reenact the exemption with the following changes:

9. Please provide any additional comments regarding the public record exemption under review.
This exemption protects the financial investments of private individuals in our state.
Additionally, other governmental entities have full access to this protected information should the need for investigation arise.

548.062 Public records exemption.—

- (1) As used in this section, the term “proprietary confidential business information” means information that:
 - (a) Is owned or controlled by the promoter;
 - (b) The promoter intends to be and treats as private;
 - (c) If disclosed, would cause harm to the promoter or its business operations;
 - (d) Has not been disclosed, except for any disclosure pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information not be released to the public; and
 - (e) Concerns any of the following:
 1. The number of ticket sales for a match;
 2. The amount of gross receipts after a match;
 3. A trade secret, as defined in s. 688.002;
 4. Business plans;
 5. Internal auditing controls and reports of internal auditors; or
 6. Reports of external auditors.
- (2) Proprietary confidential business information provided by a promoter to the commission or obtained by the commission through an audit of the promoter's books and records pursuant to s. 548.06 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.
- (3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 1, ch. 2014-129; s. 1, ch. 2016-21.

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: SPB 7024

INTRODUCER: Regulated Industries Committee

SUBJECT: OGSR/Agency Trade Secrets

DATE: February 17, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	Imhof		RI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7024 amends s. 815.04(3), F.S., to remove the scheduled repeal of a public records exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, qualified trade secrets remain confidential and exempt from public disclosure.

The bill is effective October 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Trade Secrets Public Records Exemptions

Criminal Prohibitions

Offenses Against Intellectual Property

Section 815.04(3), F.S., makes data, programs, or supporting documentation that are a trade secret, as defined in s. 812.081, F.S., reside or exist internal or external to a computer, computer system, or computer network, and are held by an agency as defined in chapter 119, confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. A person who willfully, knowingly, and without authorization discloses or takes such information commits an offense against intellectual property.²⁷ Section 815.04(5), F.S., provides that a violation is a felony of the third degree.²⁸

Section 815.02, F.S., expresses the legislative intent for the computer-related crimes provided in ch. 815, F.S., including the concern that such crimes are a growing concern, and affect financial institutions, government programs, government records, and other business enterprises.²⁹

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 815.04(4), F.S.

²⁸ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

²⁹ See 815.02, F.S.

In 2016, the definition of “trade secret” in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption in s. 815.04(3), F.S., was reenacted in 2016 to incorporate the new definition of “trade secret.”³⁰ The public records exemption in s. 815.04(3), F.S., stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.³¹

Theft, Embezzlement, and Unlawful Copying

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.³²

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets as defined by s. 812.081(1)(c), F.S.:

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is a trade secret and agency-produced data processing software that is sensitive.
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.

³⁰ See ch 2016-5, s. 20, Laws of Fla.

³¹ *Id.*

³² See s. 812.081(2), F.S.

- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.³³
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.

³³ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,³⁴ and the right to recover damages for the misappropriation of a trade secret.³⁵ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³⁶

Section 688.002(4), F.S., defines the term “trade secret” to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of “trade secret” in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has “independent economic value,” rather than just be “of value,” as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt “trade secrets” as defined in s. 688.002(4), F.S., or include “trade secrets” as defined in s. 688.002(4), F.S., within the meaning of the term “proprietary confidential information” or “proprietary business information” when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.

³⁴ Section 688.003, F.S.

³⁵ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³⁶ See s. 688.008, F.S.

- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.
- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.
- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or

received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.

- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.
- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.
- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³⁷ In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³⁸

³⁷ *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³⁸ *Id.*

Open Government Sunset Review Questionnaires

In September 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to several state agencies and to the Florida League of Cities and the Florida Association of Counties for transmittal to those association's member-agencies. Twenty-two state and local agencies responded to the questionnaires, representing 15 state agencies, five city governments, and two school boards. Staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

The majority of responding agencies stated that they have records that are affected by the exemption. The types of records vary by agency. Examples of the types of affected records include bids or competitive contract proposals submitted by prospective vendors, contracts, financial information and personal identifying and financial information of employees, and records received from the Seminole Tribe of Florida under the state's Indian gaming compact.³⁹

The questionnaire asked the agencies if it would be more appropriate for the public record exemption under review to use the definition of "trade secret" provided for in s. 688.002(4), F.S., as opposed to the definition in s. 812.081(1)(c), F.S. Of the agencies that responded to this question, most stated that the exemption should not be changed, two respondents recommended that the definitions should be revised to be identical or merged into a single definition, one respondent stated that either definition was appropriate, and two agencies stated that the definition in s. 688.002(4), F.S., was the more appropriate definition.

Advising that the exemption should continue to use the definition in s. 812.081(1)(c), F.S., the Department of Correction (DOC) stated that changing the definition would "upend years of case law. The definition of a "trade secret" in section 812.081, F.S., has been referenced by Chapter 119 since the exemption was created in 1985." The DOC noted that such a change "would be detrimental to records custodians as their guidance would have to be altered. The elements for each test differ and adopting the elements in section 688.002(4), F.S., would require a determination of "reasonableness" that is often hard to define and easy to litigate. Section 688.002(4), F.S., doesn't encompass the same level of specificity as section 812.081, F.S., and this would create confusion for both custodians and the public."⁴⁰

Agencies also noted that the public records exemption in s. 119.071(1)(f), F.S., relating to data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret and agency-produced data processing software that is sensitive is similar the public records exemption in s. 815.04(3), F.S.

Some agencies noted other public record exemptions are applicable to the types of records in their possession. For example, the Office of Insurance Regulation noted that it receives data that is identified as "trade secret" pursuant to s. 624.4213, F.S. Those "trade secrets" are considered

³⁹ See *Open Government Sunset Review Questionnaire* response from the Florida Department of Business and Professional Regulation, dated Nov. 16, 2020, and on file with the Senate Committee on Regulated Industries.

⁴⁰ See *Open Government Sunset Review Questionnaire* response from the Florida Department of Corrections, dated Oct. 22, 2020, and on file with the Senate Committee on Regulated Industries.

“proprietary business information” as defined by s. 624.4212, F.S., which references the definition of “trade secret” in s. 688.002, F.S.⁴¹

None of the agencies surveyed recommended that the exemption in s. 815.04(3), F.S., should not be reenacted. Two respondents made recommendations to amend the exemption that did not relate to the definition of the term trade secret in ss. 688.002(4) and 812.081(1)(c), F.S.

The City of Clearwater recommended that s. 119.071(1)(f), F.S., should be reenacted and amended to "include language applicable to Remote Software Service Providers and/or "Cloud" provided software and services."⁴²

The Department of Highway Safety and Motor Vehicles noted that the 2016 amendment to s. 812.081(1)(c), F.S., which added financial information to the definition of the term “trade secret,” has led to vendors submitting bids, proposals, or replies claiming that their pricing is a trade secret. The agency noted that “when pricing for competitive solicitations, as “financial information,” is deemed a trade secret, both government watchdogs and vendors who submit unsuccessful responses are restricted in their review of the procurement process, which thereby diminishes the transparency of government contracting. It would greatly assist agencies if the Legislature clarified whether a vendor’s pricing constitutes a trade secret.”⁴³

III. Effect of Proposed Changes:

The bill amends s. 815.04(3), F.S., to remove the scheduled repeal of a public records exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, qualified trade secrets remain confidential and exempt from public disclosure.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴¹ See *Open Government Sunset Review Questionnaire* response from the Office of Insurance Regulation, dated Oct. 23, 2020, and on file with the Senate Committee on Regulated Industries.

⁴² See *Open Government Sunset Review Questionnaire* response from the City of Clearwater, dated Oct. 22, 2020, and on file with the Senate Committee on Regulated Industries.

⁴³ See *Open Government Sunset Review Questionnaire* response from the Department of Highway Safety and Motor Vehicles, dated Oct. 20, 2020, and on file with the Senate Committee on Regulated Industries.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 s. 815.04 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Regulated Industries

580-01517-21

20217024pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 815.04, F.S.; abrogating the scheduled repeal of a public records exemption for data, programs, or supporting documentation that is a trade secret held by an agency and which resides or exists internal or external to a computer, a computer system, a computer network, or an electronic device; providing an effective date.

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

Section 1. Subsection (3) of section 815.04, Florida Statutes, is amended to read:

815.04 Offenses against intellectual property; public records exemption.—

(3) Data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that resides or exists internal or external to a computer, computer system, computer network, or electronic device is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2021.

CourtSmart Tag Report

Room: KN 412
Caption: Senate Committee on Regulated Industries

Type:
Judge:

Started: 2/16/2021 12:30:38 PM
Ends: 2/16/2021 2:27:22 PM **Length:** 01:56:45

12:30:36 PM Meeting called to order and roll call
12:30:42 PM
12:31:00 PM Pledge of Allegiance
12:31:13 PM Chair opening comments
12:32:18 PM Tab 2 - SB 148, Beverage Law, by Senator Bradley
12:32:42 PM Amendment Barcode 690554 by Senator Bradley
12:35:41 PM Amendment to Amendment 714630 by Senator Bradley
12:36:59 PM Question by Senator Book on the Amend. to the Amend.
12:38:00 PM Response by Senator Bradley
12:38:16 PM Question by Senator Rouson on the amend. to the amend.
12:38:36 PM Response by Senator Bradley
12:38:55 PM Followup question by Senator Rouson
12:39:25 PM Response by Senator Bradley
12:40:09 PM Question by Senator Rouson
12:41:25 PM Response by Senator Bradley
12:41:42 PM Debate by Senator Rouson on Amend. to Amend.
12:43:28 PM Amendment to Amendment 714630 adopted
12:44:13 PM Question by Senator Hooper on the amendment as amended
12:44:16 PM Response by Senator Bradley
12:44:54 PM Question by Senator Gruters on the amendment as amended
12:46:10 PM Question by Senator Book on the amendment as amended
12:47:20 PM Response by Senator Bradley
12:47:44 PM Appearance Cards on Amendment 690554
12:47:53 PM Andrew Ketchell, The Distilled Spirits Council of the US waives in support
12:48:00 PM Johathan Rees, Anheuser-Busch waives in support
12:48:16 PM Senator Book in debate on the amendment
12:49:10 PM Amendment 690554 as amended adopted
12:49:29 PM Jake Farmer, Florida Retail Federation waives in support
12:49:38 PM Diego Echeverri, Americans for Prosperity, waives in support
12:49:43 PM Brewster Bevis, Associated Industries of Florida, waives in support
12:49:47 PM Greg Black, R Street Institute, waives in support
12:49:51 PM Scott Dick, ABC Fine Wine and Liquor, waives in support
12:49:58 PM Jorge Chamizo, Uber Technologies, waives in support
12:50:09 PM Eli Nortelus, Florida Independent Spirits Association, waives in support
12:50:15 PM Samantha Padgett, Florida Restaurant and Lodging Association speaks on the bill
12:55:04 PM Question from Senator Book
12:55:36 PM Response by Samantha Padgett
12:56:22 PM Debate on the bill
12:56:26 PM Senator Gruters in debate
12:57:48 PM Senator Stewart in debate
12:58:27 PM Senator Book in debate
12:59:29 PM Senator Bradley closing on SB 148 as amended
12:59:40 PM Roll call on CS/SB 148
1:00:21 PM CS/SB 148 is reported favorably
1:00:50 PM Booter Imhof for commentary regarding the SPB's public record bills
1:02:45 PM Tab 4 - SPB 7028 OGSR/Data Processing Software
1:03:11 PM Miguel Oxamendi presents SPB 7028
1:03:57 PM Question by Senator Stewart
1:04:56 PM Response by Miguel
1:06:58 PM Senator Book moves that SPB 7028 be submitted as a committee bill
1:07:19 PM Roll call on SPB 7028
1:07:25 PM SPB 7028 is Favorably reported as a committee bill

1:07:39 PM Tab 5 - SPB 7022 OGSR/Proprietary Confidential Business Information
1:07:58 PM Shirley Sharon presents SPB 7022
1:09:37 PM Chair Hutson read appearance cards for those waiving in support
1:09:48 PM
1:10:06 PM Senator books moves that SPB 7022 by submitted as a committee bill
1:10:26 PM Roll call on SPB 7022
1:10:32 PM SPB 7022 is Favorably reported as a committee bill
1:10:47 PM Tab 6 SPB 7032 OGSR/Prescription Drug Purchase Lists
1:10:57 PM Mary Kraemer presents SPB 7032
1:12:15 PM Jennifer Ungru, ASbbVie Inc., waives in support
1:12:32 PM Senator Book moves that SPB 7032 be submitted as a committee bill
1:12:43 PM Roll call on SPB 7032
1:12:51 PM SPB 7032 is Favorably reported as a committee bill
1:13:06 PM Tab 7 - SPB 7034 OGSR/Trade Secrets/Department of Business and Professional Regulation
1:13:11 PM Mary Kraemer presents SPB 7034
1:15:00 PM Senator Book moves that SPB 7034 be submitted as a committee bill
1:15:14 PM Roll call on SPB 7034
1:15:23 PM SPB 7034 is Favorably reported as a committee bill
1:15:34 PM Tab 8 SPB 7030 OGSR/Trade Secrets/Department of Business and Professional Regulation
1:15:48 PM Mary Kraemer presents SPB 7030
1:16:49 PM Senator Book moves that SPB 7030 be submitted as a committee bill
1:17:05 PM Roll call on SPB 7030
1:17:13 PM SPB 7030 is favorably reported as a committee bill
1:17:25 PM Tab 9 SPB 7026 OGSR/Florida State Boxing Commission
1:17:33 PM Miguel Oxamendi presents SPB 7026
1:18:10 PM Senator Book moves that SPB 7036 be submitted as a committee bill
1:18:53 PM Roll call on SPB 7026
1:19:12 PM SPB 7026 is Favorably reported as a committee bill
1:19:26 PM Tab 10 SPB 7024 OGSR/Agency Trade Secrets
1:19:31 PM Miguel Oxamendi presents SPB 7024
1:20:22 PM Senator Book moves that SPB 7024 be submitted as a committee bill
1:21:25 PM Roll call on SPB 7024
1:21:30 PM SPB 7024 is Favorably reported as a committee bill
1:22:00 PM Chair Hutson calls a 10 minute recess
1:22:32 PM Recording Paused
1:31:51 PM Recording Resumed
1:31:57 PM Tab 3 SB 522 by Senator Diaz, Vacation Rentals
1:32:05 PM Senator Diaz to explain Barcode 940098
1:35:45 PM Jorge Chamizo, City of Panama City Beach, waives in support
1:36:02 PM Andrew Ketchel, Florida Vacaton Rentals Management Assoc., waives in support
1:36:22 PM Delete-all amendment barcode 940098 adopted
1:36:44 PM Senator Passidomo for a question
1:37:26 PM Response by Senator Diaz
1:37:49 PM Senator Passidomo for a question
1:38:13 PM Response by Senator Diaz
1:39:42 PM Question by Senator Passidomo
1:40:03 PM Response by Senator Diaz
1:41:30 PM Question by Senator Passidomo
1:41:37 PM Response by Senator Diaz
1:42:08 PM Question by Senator Passidomo
1:43:10 PM Response by Senator Diaz
1:43:36 PM Question by Senator Passidomo
1:43:52 PM Response by Senator Diaz
1:44:45 PM Senator Hooper for a question
1:45:48 PM Response by Senator Diaz
1:46:28 PM Senator Rouson for questions and responses by Senator Diaz
1:48:12 PM Senator Stewart for a series of questions and responses by Senator Diaz
1:51:38 PM Senator Book for a series of questions and responses by Senator Diaz
1:53:55 PM Question by Chair Hudson and response by Senator Diaz
1:54:55 PM Chair Hutson reads Appearance Cards of people waiving in support and against
1:55:43 PM Tara Taggart, Florida League of Cities, speaking against the bill
1:57:56 PM Jack Cori, representing Jacksonville Beach and Village of Tequesta, speaking against the bill

2:00:34 PM Lino Maldonado, Florida Vacation Rental Coalition, speaking for the bill
2:05:11 PM Eric Pool waiving against the bill
2:05:35 PM Debate
2:05:40 PM Senator Book in debate
2:06:24 PM Senator Passidomo in debate
2:10:20 PM Senator Hooper in debate
2:14:18 PM Senator Stewart in debate
2:15:30 PM Senator Gruters in debate
2:16:24 PM Senator Diaz to close on SB 522
2:17:31 PM Roll call on CS/SB 522
2:18:35 PM CS/SB 522 is reported Favorably
2:19:02 PM Chair Hutson passes chair to Vice Chair Book
2:19:15 PM Tab 1, SB 630 by Senators Baxley and Hutson, Community Associations
2:19:27 PM Delete-all amendment, 248146, explained by Senator Hutson
2:23:09 PM Chair Book reads appearance cards for speakers waiving speaking time
2:23:30 PM Travis Moore, Community Assoc. Inst. & First Service Residential waives
2:23:54 PM Delete-All Amendment Barcode 248146 adopted
2:24:10 PM Chair Book reads appearance cards of those waiving speaking time
2:24:41 PM
2:25:36 PM Senator Hutson to close on the bill as amended
2:25:46 PM Roll call on CS/SB 630
2:25:57 PM CS/SB 630 is reported favorably
2:26:11 PM Chair turned back over to Chair Hutson
2:26:21 PM Senator Rodrigues motion to be shown as voting yes on a series of bills
2:27:13 PM Senator Hooper moves to adjourn, meeting adjourned