

By Senator Pizzo

38-00906A-19

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1                                   A bill to be entitled  
2       An act relating to condominium associations; amending  
3       s. 718.111, F.S.; revising criminal penalties relating  
4       to the acceptance of things or services of value or  
5       kickbacks; providing criminal penalties for certain  
6       violations relating to official association records;  
7       defining the term "repeatedly"; revising criminal  
8       penalties relating to the use of association debit  
9       cards; defining the term "lawful obligation of the  
10      association"; creating s. 718.129, F.S.; providing  
11      criminal penalties for fraudulent voting activities  
12      related to association elections; providing an  
13      effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17       Section 1. Paragraphs (a) and (d) of subsection (1),  
18      paragraph (c) of subsection (12), and paragraph (b) of  
19      subsection (15) of section 718.111, Florida Statutes, are  
20      amended to read:

21       718.111 The association.—

22       (1) CORPORATE ENTITY.—

23       (a) The operation of the condominium shall be by the  
24      association, which must be a Florida corporation for profit or a  
25      Florida corporation not for profit. However, any association  
26      which was in existence on January 1, 1977, need not be  
27      incorporated. The owners of units shall be shareholders or  
28      members of the association. The officers and directors of the  
29      association have a fiduciary relationship to the unit owners. It

38-00906A-19

2019610\_\_

30 is the intent of the Legislature that nothing in this paragraph  
31 shall be construed as providing for or removing a requirement of  
32 a fiduciary relationship between any manager employed by the  
33 association and the unit owners. An officer, director, or  
34 manager may not solicit, offer to accept, or accept any thing or  
35 service of value or kickback for which consideration has not  
36 been provided for his or her own benefit or that of his or her  
37 immediate family, from any person providing or proposing to  
38 provide goods or services to the association. Any such officer,  
39 director, or manager who knowingly so solicits, offers to  
40 accept, or accepts any thing or service of value or kickback  
41 commits a felony of the third degree, punishable as provided in  
42 s. 775.082, s. 775.083, or s. 775.084, and is subject to a civil  
43 penalty pursuant to s. 718.501(1)(d) ~~and, if applicable, a~~  
44 ~~criminal penalty as provided in paragraph (d).~~ However, this  
45 paragraph does not prohibit an officer, director, or manager  
46 from accepting services or items received in connection with  
47 trade fairs or education programs. An association may operate  
48 more than one condominium.

49 (d) As required by s. 617.0830, an officer, director, or  
50 agent shall discharge his or her duties in good faith, with the  
51 care an ordinarily prudent person in a like position would  
52 exercise under similar circumstances, and in a manner he or she  
53 reasonably believes to be in the interests of the association.  
54 An officer, director, or agent shall be liable for monetary  
55 damages as provided in s. 617.0834 if such officer, director, or  
56 agent breached or failed to perform his or her duties and the  
57 breach of, or failure to perform, his or her duties constitutes  
58 a violation of criminal law as provided in s. 617.0834;

38-00906A-19

2019610\_\_

59 constitutes a transaction from which the officer or director  
60 derived an improper personal benefit, either directly or  
61 indirectly; or constitutes recklessness or an act or omission  
62 that was in bad faith, with malicious purpose, or in a manner  
63 exhibiting wanton and willful disregard of human rights, safety,  
64 or property. ~~Forgery of a ballot envelope or voting certificate~~  
65 ~~used in a condominium association election is punishable as~~  
66 ~~provided in s. 831.01, the theft or embezzlement of funds of a~~  
67 ~~condominium association is punishable as provided in s. 812.014,~~  
68 ~~and the destruction of or the refusal to allow inspection or~~  
69 ~~copying of an official record of a condominium association that~~  
70 ~~is accessible to unit owners within the time periods required by~~  
71 ~~general law in furtherance of any crime is punishable as~~  
72 ~~tampering with physical evidence as provided in s. 918.13 or as~~  
73 ~~obstruction of justice as provided in chapter 843. An officer or~~  
74 director charged by information or indictment with a crime  
75 referenced in this paragraph must be removed from office, and  
76 the vacancy shall be filled as provided in s. 718.112(2)(d)2.  
77 until the end of the officer's or director's period of  
78 suspension or the end of his or her term of office, whichever  
79 occurs first. If a criminal charge is pending against the  
80 officer or director, he or she may not be appointed or elected  
81 to a position as an officer or a director of any association and  
82 may not have access to the official records of any association,  
83 except pursuant to a court order. However, if the charges are  
84 resolved without a finding of guilt, the officer or director  
85 must be reinstated for the remainder of his or her term of  
86 office, if any.

87 (12) OFFICIAL RECORDS.-

38-00906A-19

2019610\_\_

88 (c)1. The official records of the association are open to  
89 inspection by any association member or the authorized  
90 representative of such member at all reasonable times. The right  
91 to inspect the records includes the right to make or obtain  
92 copies, at the reasonable expense, if any, of the member or  
93 authorized representative of such member. A renter of a unit has  
94 a right to inspect and copy the association's bylaws and rules.  
95 The association may adopt reasonable rules regarding the  
96 frequency, time, location, notice, and manner of record  
97 inspections and copying. The failure of an association to  
98 provide the records within 10 working days after receipt of a  
99 written request creates a rebuttable presumption that the  
100 association willfully failed to comply with this paragraph. A  
101 unit owner who is denied access to official records is entitled  
102 to the actual damages or minimum damages for the association's  
103 willful failure to comply. Minimum damages are \$50 per calendar  
104 day for up to 10 days, beginning on the 11th working day after  
105 receipt of the written request. The failure to permit inspection  
106 entitles any person prevailing in an enforcement action to  
107 recover reasonable attorney fees from the person in control of  
108 the records who, directly or indirectly, knowingly denied access  
109 to the records.

110 2. Any director or member of the board or association who  
111 knowingly, willfully, and repeatedly violates subparagraph 1.  
112 commits a misdemeanor of the second degree, punishable as  
113 provided in s. 775.082 or s. 775.083. For the purposes of this  
114 subparagraph, the term "repeatedly" means two or more violations  
115 within a 12-month period.

116 3.2. Any person who knowingly or intentionally defaces or

38-00906A-19

2019610\_\_

117 destroys accounting records that are required by this chapter to  
118 be maintained during the period for which such records are  
119 required to be maintained, or who knowingly or intentionally  
120 fails to create or maintain accounting records that are required  
121 to be created or maintained, with the intent of causing harm to  
122 the association or one or more of its members, commits a  
123 misdemeanor of the first degree, punishable as provided in s.  
124 775.082 or s. 775.083 ~~is personally subject to a civil penalty~~  
125 ~~pursuant to s. 718.501(1)(d).~~

126 4. Any person who willfully and knowingly refuses to  
127 release or otherwise produce association records with the intent  
128 to avoid or escape detection, arrest, trial, or punishment for  
129 the commission of a crime, or to assist another person with such  
130 avoidance or escape, commits a felony of the third degree,  
131 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

132 ~~5.3.~~ The association shall maintain an adequate number of  
133 copies of the declaration, articles of incorporation, bylaws,  
134 and rules, and all amendments to each of the foregoing, as well  
135 as the question and answer sheet as described in s. 718.504 and  
136 year-end financial information required under this section, on  
137 the condominium property to ensure their availability to unit  
138 owners and prospective purchasers, and may charge its actual  
139 costs for preparing and furnishing these documents to those  
140 requesting the documents. An association shall allow a member or  
141 his or her authorized representative to use a portable device,  
142 including a smartphone, tablet, portable scanner, or any other  
143 technology capable of scanning or taking photographs, to make an  
144 electronic copy of the official records in lieu of the  
145 association's providing the member or his or her authorized

38-00906A-19

2019610\_\_

146 representative with a copy of such records. The association may  
147 not charge a member or his or her authorized representative for  
148 the use of a portable device. Notwithstanding this paragraph,  
149 the following records are not accessible to unit owners:

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

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

163 c. Personnel records of association or management company  
164 employees, including, but not limited to, disciplinary, payroll,  
165 health, and insurance records. For purposes of this sub-  
166 subparagraph, the term "personnel records" does not include  
167 written employment agreements with an association employee or  
168 management company, or budgetary or financial records that  
169 indicate the compensation paid to an association employee.

170 d. Medical records of unit owners.

171 e. Social security numbers, driver license numbers, credit  
172 card numbers, e-mail addresses, telephone numbers, facsimile  
173 numbers, emergency contact information, addresses of a unit  
174 owner other than as provided to fulfill the association's notice

38-00906A-19

2019610\_\_

175 requirements, and other personal identifying information of any  
176 person, excluding the person's name, unit designation, mailing  
177 address, property address, and any address, e-mail address, or  
178 facsimile number provided to the association to fulfill the  
179 association's notice requirements. Notwithstanding the  
180 restrictions in this sub-subparagraph, an association may print  
181 and distribute to parcel owners a directory containing the name,  
182 parcel address, and all telephone numbers of each parcel owner.  
183 However, an owner may exclude his or her telephone numbers from  
184 the directory by so requesting in writing to the association. An  
185 owner may consent in writing to the disclosure of other contact  
186 information described in this sub-subparagraph. The association  
187 is not liable for the inadvertent disclosure of information that  
188 is protected under this sub-subparagraph if the information is  
189 included in an official record of the association and is  
190 voluntarily provided by an owner and not requested by the  
191 association.

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

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

198 (15) DEBIT CARDS.—

199 (b) A person who uses ~~Use of~~ a debit card issued in the  
200 name of the association, or billed directly to the association,  
201 for any expense that is not a lawful obligation of the  
202 association commits theft under s. 812.014. For the purposes of  
203 this paragraph, a "lawful obligation of the association" means

38-00906A-19

2019610\_\_

204 an obligation that has been properly preapproved by the board  
205 and is reflected in the meeting minutes or the written budget  
206 ~~may be prosecuted as credit card fraud pursuant to s. 817.61.~~

207 Section 2. Section 718.129, Florida Statutes, is created to  
208 read:

209 718.129 Fraudulent voting activities related to association  
210 elections; penalties.-

211 (1) Each of the following acts is a fraudulent voting  
212 activity related to association elections and constitutes a  
213 felony of the third degree, punishable as provided in s.  
214 775.082, s. 775.083, or s. 775.084:

215 (a) Willfully and falsely swearing or affirming any oath or  
216 affirmation, or willfully procuring another person to swear or  
217 affirm falsely to an oath of affirmation, in connection with or  
218 arising out of voting or elections.

219 (b) Perpetrating or attempting to perpetrate, or aiding in  
220 the perpetration of, any fraud in connection with any vote cast,  
221 to be cast, or attempted to be cast.

222 (c) Preventing an elector from voting, or preventing an  
223 elector from voting as the elector intended, by fraudulently  
224 changing or attempting to change a ballot, ballot envelope,  
225 vote, or voting certificate of the elector.

226 (d) Using bribery, menace, threat, or any other corruption  
227 to attempt, directly or indirectly, to influence, deceive, or  
228 deter any elector in voting.

229 (e) Directly or indirectly giving or promising anything of  
230 value to another person with the intent to buy the vote of that  
231 person or another person or to corruptly influence that person  
232 or another person in casting his or her vote. However, this

38-00906A-19

2019610\_\_

233 paragraph does not apply to the serving of food to be consumed  
234 at an election rally or meeting or to any item of nominal value  
235 which is used as an election advertisement, including a campaign  
236 message designed to be worn by a person.

237 (f) Directly or indirectly using or threatening to use  
238 force, violence, or intimidation or any tactic of coercion or  
239 intimidation to induce or compel an individual to vote or  
240 refrain from voting in an election or on any particular ballot  
241 measure.

242 (2) Each of the following acts constitutes a felony of the  
243 third degree, punishable as provided in s. 775.082, s. 775.083,  
244 or s. 775.084:

245 (a) Knowingly aiding, abetting, or advising a person in the  
246 commission of a fraudulent voting activity related to  
247 association elections.

248 (b) Agreeing, conspiring, combining, or confederating with  
249 at least one other person to commit a fraudulent voting activity  
250 related to association elections.

251 (c) Having knowledge of a fraudulent voting activity  
252 related to association elections and giving any aid to the  
253 offender with intent that the offender avoid or escape  
254 detection, arrest, trial, or punishment. This paragraph does not  
255 apply to a licensed attorney giving legal advice to a client.

256 Section 3. This act shall take effect October 1, 2019.