

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 522

INTRODUCER: Regulated Industries Committee and Senator Diaz

SUBJECT: Vacation Rentals

DATE: March 10, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**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 chapters 125, 205, and 212, Florida Statutes, 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 section 509.092, Florida Statutes;
- Allows Department of Revenue to adopt emergency rules for six months 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 DBPR has estimated it will need three full-time positions and \$370,185 from the Hotel and Restaurant Trust Fund in order to process the estimated increase in licenses, complaints, and compliance cases. It is anticipated there will be an indeterminate increase in license fees and fines to the trust fund and an increase in sales tax collections. In addition, the bill will have an indeterminate negative fiscal impact on the Florida Department of Law Enforcement.

There may be a decrease of an indeterminate amount on revenues to local governments relating to the preemption from regulating vacation rentals and advertising platform; however, there may be an increase in local tourist development taxes relating to the additional projected licenses. The Revenue Estimating Conference determined that the provisions of the bill that require advertising platforms to collect and remit state and local sales taxes have no fiscal impact.

The bill takes effect upon becoming a 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 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.<sup>1</sup> 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;

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<sup>1</sup> Section 509.013(4)(a), F.S.

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.;
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.

A public lodging establishment is classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.<sup>2</sup>

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.

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<sup>2</sup> Section 509.242(1), F.S.

The DBPR licenses vacation rentals as condominiums, dwellings, or timeshare projects.<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup>

The 48,226 public lodging establishments licensed by the division are distributed as follows:<sup>6</sup>

- 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;
- 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.<sup>7</sup> 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.<sup>8</sup>

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

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<sup>3</sup> Fla. Admin. Code R. 61C-1.002(4)(a)1.

<sup>4</sup> The division further classifies a vacation rental license as a single, group, or collective license. *See* Fla. Admin. Code R. 61C-1.002(4)(a)1. 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.

<sup>5</sup> Department of Business and Professional Regulation, *2021 Agency Legislative Bill Analysis for SB 522*, at 2 (Feb. 8, 2021) (on file with the Senate Committee on Regulated Industries).

<sup>6</sup> 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).

<sup>7</sup> Section 509.032(2)(a), F.S.

<sup>8</sup> 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](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2019_20.pdf) (last visited Feb. 5, 2021).

general safety and regulatory matters.<sup>9</sup> The division must notify the local fire safety authority or the State Fire Marshal of any readily observable violation of a rule adopted under ch. 633, F.S.,<sup>10</sup> which relates to a public lodging establishment.<sup>11</sup>

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.<sup>12</sup>

### **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.”

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.<sup>13</sup>

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.<sup>14</sup>

### **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

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<sup>9</sup> See ss. 509.211 and 509.221, F.S., for the safety and sanitary regulations, respectively. See also Fla. Admin. Code R. 61C-1.002; *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).

<sup>10</sup> 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.

<sup>11</sup> Section 509.032(2)(d), F.S.

<sup>12</sup> 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](http://www.myfloridalicense.com/dbpr/hr/forms/documents/application_packet_for_vacation_rental_license.pdf) (last visited Feb. 5, 2021).

<sup>13</sup> Section 509.032(7)(a), F.S.

<sup>14</sup> See s. 163.3164(43), F.S., which provides that the state land planning agency is the Department of Economic Opportunity.

- Regulated vacation rentals based solely on their classification, use, or occupancy.<sup>15</sup>

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.<sup>16</sup>

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.<sup>17</sup> 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.”<sup>18</sup>

### 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.<sup>19</sup> 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 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.<sup>20</sup>

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.<sup>21</sup> 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

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<sup>15</sup> Chapter 2011-119, Laws of Fla.

<sup>16</sup> *Id.*

<sup>17</sup> Chapter 2014-71, Laws of Fla. (codified in s. 509.032(7)(b), F.S.).

<sup>18</sup> *Id.*

<sup>19</sup> 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).

<sup>20</sup> 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).

<sup>21</sup> Op. Att’y Gen. Fla. 2016-12, *Municipalities - Vacation Rentals – Zoning*, Oct. 5, 2016 (on file with the Senate Committee on Regulated Industries).

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.<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup>

### **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.<sup>25</sup> The 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 statutes<sup>26</sup> and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Florida Department of Corrections (FDC), the Department of Juvenile Justice (DJJ), 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;<sup>27</sup>
- 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.<sup>28</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> 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).

<sup>24</sup> See Florida Commission on Human Relations, *Public Accommodations*, <https://fchr.myflorida.com/public-accommodations> (last visited Feb. 7, 2021).

<sup>25</sup> Sections 775.21 and 943.0435, F.S.

<sup>26</sup> Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

<sup>27</sup> 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.).

<sup>28</sup> 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



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.<sup>29</sup>

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.<sup>30</sup> Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the FDC's control or custody, under the FDC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

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.<sup>31</sup>

The FDLE, through its agency website, provides a searchable database that includes some of this information.<sup>32</sup> Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

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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.

<sup>29</sup> 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."

<sup>30</sup> 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.

<sup>31</sup> Sections 775.21(6)(e)1.a. and 943.0435(2)(a)1., F.S., providing registration requirements for sexual predators and offenders, respectively.

<sup>32</sup> 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).

### ***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.<sup>33</sup>

“Permanent residence” means a place where the person abides, lodges, or resides for three or more consecutive days.<sup>34</sup>

“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.<sup>35</sup>

“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.<sup>36</sup>

## **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 regulation 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.

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<sup>33</sup> Sections 775.21(2)(k), (n), and (o) and 943.0435(1)(f), F.S.

<sup>34</sup> Section 775.21(2)(k), F.S.

<sup>35</sup> Section 775.21(2)(n), F.S.

<sup>36</sup> Section 775.21(2)(o), F.S.

### **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, the applicable Florida sales tax registration, 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 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 of Hotels and Restaurants (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 Department of Business and Professional Regulation is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, F.S., it is entitled to collect its attorney fees and costs, together with any cost of collection.

### ***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,<sup>37</sup> 125.0108,<sup>38</sup> 205.044,<sup>39</sup> 212.03,<sup>40</sup> 212.0305,<sup>41</sup> and 212.055, F.S.,<sup>42</sup> 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.

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<sup>37</sup> Section 125.0104, F.S., relates to the local option tourist development tax.

<sup>38</sup> Section 125.0108, F.S., relates to the tourist impact tax in areas within a county designated as an area of critical state concern.

<sup>39</sup> Section 205.044, F.S., relates to the merchant business tax measured by gross receipts.

<sup>40</sup> Section 212.03, F.S., relates to the transient rentals tax.

<sup>41</sup> Section 212.0305, F.S., relates to convention development taxes.

<sup>42</sup> Section 212.055, F.S., relates to discretionary sales taxes.

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.

### **Effective Date**

The bill takes effect upon becoming a 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 (DBPR) 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.<sup>43</sup>

Local governments may see an increase in local tourist development taxes.

The Revenue Estimating Conference determined that the provisions of the bill that require advertising platforms to collect and remit state and local sales taxes have no fiscal impact.

**B. Private Sector Impact:**

Indeterminate.

**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) to the Hotel and Restaurant Trust Fund and a need of three full-time positions and seven OPS employees in order to process an estimated increase in licenses, complaints, and compliance cases.<sup>44</sup>

According to the Florida Department of Law Enforcement (FDLE), amending the definition of “temporary residence” to include a vacation rental where a person lodges for 24 hours or more will lead to a “substantial increase” in the number of sexual predators and offenders required to complete a registration, although the FDLE was unable to estimate the number of sexual predators or offenders subject to the revised definition.<sup>45</sup> The increase of registrations could potentially impact the workload associated with the Florida Sexual Offender and Predator Registry and require programmatic changes to FDLE’s technology systems. Therefore, this bill will have an indeterminate negative fiscal impact on the FDLE.

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<sup>43</sup> See note 5, *supra* at page 7.

<sup>44</sup> *Id.* at pages 5 and 8.

<sup>45</sup> Florida Department of Law Enforcement, *2021 Agency Legislative Bill Analysis for CS/SB 522*, at 3 (Feb. 25, 2021) (on file with the Senate Subcommittee on Agriculture, Environment, and General Government).

**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, 509.243, 553.5041, 705.17, 705.185, 717.1355, 775.21, 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 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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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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