

**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 Regulated Industries

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BILL: SB 512

INTRODUCER: Senator Burgess

SUBJECT: Vacation Rentals

DATE: January 10, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 512 revises the regulation 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). Current law does not allow 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.

The bill permits “grandfathered” local laws, ordinances, or regulations adopted on or before June 1, 2011, to be amended to be less restrictive or to comply with local registration requirements. The bill does not affect vacation rental ordinances in jurisdictions located in an area of critical state concern.

Under the bill, a local government may require vacation rentals to be registered. The registration fee may not exceed \$50. A local government may impose a fine for failure to register a vacation rental. The bill establishes limits for a local government registration program, including requiring a vacation rental owner to obtain any required tax registrations, pay all recorded municipal or county code liens, and designate a responsible person who is available 24/7 to respond to complaints. A local government may adopt parking and garbage requirements so long as those standards are not imposed solely on vacation rentals. Additionally, the bill requires local governments to accept or deny a registration application within 15 days of receipt of an application. The bill authorizes the division to issue temporary licenses to permit the operation of the vacation rental while the license application is pending.

The bill permits a local government to terminate a local registration for violations of local registration requirements. The bill also authorizes the division to revoke or suspend state

vacation rental licenses for violations of local registration requirements and violations of community association property restrictions.

The bill 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 issued by the DBPR and the local registration number 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 local registration number 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 by July 1, 2023. The advertising platform must remove from public view any advertisement or listing that fails to display a valid vacation rental license number.

Advertising platforms are required by the bill to collect and remit any taxes imposed under chapters 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 amount 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:

- Authorizes the division to fine an advertising an amount not to exceed \$1,000 for a violation of the provisions in the bill or rules of the division;
- 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;
- Provides that the advertising platform requirements in the bill do not create a private right of action against advertising platforms;
- Allows the Department of Revenue to adopt emergency rules for six months which may be renewed until permanent rules are adopted;
- Provides that its terms do not supersede any current or future declaration or covenant for condominium, cooperative, or homeowners' associations; and
- Requires a sexual offender or predator to register at the local sheriff's office no later than 5:00 p.m., 24 hours after establishing a temporary residence in a vacation rental.

The Revenue Estimating Conference determined that the provisions in 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, 2023.

## 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. (emphasis supplied)

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. (emphasis supplied)

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

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

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.

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>

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

<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> *See* s. 509.242(1)(c), F.S., defining the term "vacation rental."

The 48,226 public lodging establishment licenses issued by the division are distributed as follows:<sup>6</sup>

- Hotels – 2,238 licenses;
- Motels – 2,446 licenses;
- Nontransient apartments – 18,117 licenses;
- Transient apartments – 873 licenses;
- Bed and Breakfast Inns – 259 licenses;
- Vacation rental condominiums – 10,224 licenses;
- Vacation rental dwellings – 19,306 licenses; and
- Vacation rental timeshare projects – 29 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 2020-2021, the division received 306 consumer complaints regarding vacation rentals. In response to the complaints, the division's inspection confirmed a violation for 31 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 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 railings, from a person competent to conduct such inspections.<sup>12</sup>

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<sup>6</sup> Department of Business and Professional Regulation, Division of Hotels and Restaurants Annual Report for FY 2020-2021 at page 8, available at [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2020\\_21.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2020_21.pdf) (last visited Jan. 3, 2022). The total number of licenses for each classification include single licenses and group and collective licenses that cover multiple condominium units, dwellings, and timeshare projects.

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

<sup>8</sup> *Supra* at note 6.

<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 Jan. 3, 2022).

<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

## 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 a 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., does not allow 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
- 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>

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[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 Jan. 3, 2022).

<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.

<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.*

## 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, established 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 zoning ordinance.<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 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

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<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 Jan. 3, 2022).

<sup>21</sup> Op. Att’y Gen. Fla. 2016-12, *Municipalities - Vacation Rentals – Preemption -* <http://www.myfloridalegal.com/ago.nsf/Opinions/1F9A7D9219CF89A3852587AB006DDC58> (last visited Jan. 3, 2022).

<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 Jan. 3, 2022).

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>

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>

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<sup>24</sup> See Florida Commission on Human Relations, *Public Accommodations*, <https://fchr.myflorida.com/public-accommodations> (last visited Jan 3, 2022).

<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 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.”



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.

### ***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>

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<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. 3, 2022).

<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.

“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 the regulation of advertising platforms to the state. The bill also amends s. 509.032(7), F.S., to preempt the licensing of vacation rentals to the state.

The bill permits any “grandfathered” local law, ordinance, or regulation adopted on or before June 1, 2011, to be amended to be less restrictive or to comply with local registration requirements.

#### **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.

#### **Local Registration of Vacation Rentals**

Under the bill, a local government may require vacation rentals to be registered. The registration fee may not exceed \$50. A local government may impose a fine for failure to register a vacation rental.

The bill establishes limits for a local government registration program. A local registration program may only require an owner or operator of a vacation rental to:

- Register no more than once per year; however, a new owner may be required to submit a new application for registration;
- Submit identifying information;
- Obtain any required tax registrations,
- Obtain a vacation rental license from the division within 60 days of after local registration;

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

- Obtain all required tax registrations, receipts, or certificate issued by the Department of Revenue, a county, or a municipal government;
- Update required information on a continuing bases to be current;
- Comply with parking standards and solid waste handling and containment requirements so long as such standards are not imposed solely on vacation rentals;
- Designate a responsible person who is available at all times to respond to complaints by telephone; and
- Pay all recorded municipal or county code liens.

Additionally, the bill requires local governments to accept or deny a registration application within 15 days of receipt of an application. The vacation rental owner or operator may agree to an extension of this time period.

If a local government denies an application, the notice of denial may be sent by United States mail or electronically. The notice must state with particularity the factual reasons for the denial and the applicable portions of an ordinance, rule, statute, or other legal authority for the denial. A local government cannot deny a registration application if the applicant cure the identified deficiency.

Upon the acceptance of a registration application, the local government must assign a unique registration number to the vacation rental or other indicia of registration and provide such registration number or other indicia of registration to the owner or operator of the vacation rental in writing or electronically.

The bill authorizes a local government to terminate a registration or to refuse to renew a registration when:

- The operation of the subject premises violates a local law, ordinance, or regulation;
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

Additionally, a local government may withdraw its acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.

### **Regulation of Vacation Rentals by the Division**

The bill amends s. 509.241(2), relating to the license application process for vacation rentals, to require application for a vacation rental license to include the local registration number, if applicable. Additionally, the bill authorizes the division to issue temporary licenses to permit the operation of the vacation rental while the license application is pending.

The bill also amends s. 509.241(3), 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 local registration number, if applicable.

The bill amends s. 509.261, F.S., to authorize the division to revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

- The operation of the subject premises violates the terms of an applicable lease or property restriction, including any property restriction adopted pursuant to chs. 718, 719, or 720, F.S.,<sup>37</sup>
- The owner or operator fails to provide proof of registration, if required by local law, ordinance, or regulation;
- The registration of the vacation rental is terminated by a local government as provided in s. 509.032(7)(b)5;
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

Under the bill, the division may suspend for a period of not more than 30 days a vacation rental license when the owner or operator has been cited for two or more code violations related to the vacation during a period of 90 days. The division shall issue a written warning or notice and provide an opportunity to cure a violation before commencing any legal proceeding.

### **Requirements for Advertising Platforms**

Effective January 1, 2023, the bill creates s. 509.243, F.S., to provide requirements, including 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 local registration number, if applicable; and
  - Attest to the best of their knowledge that the license number and the local registration number, if applicable, for the vacation rental property are current, valid, and accurately stated in the advertisement.
- Effective July 1, 2023, display the vacation rental license number in all advertisements after it has first verified the vacation rental property's license number with the DBPR, and then re-verify the license number on a quarterly basis.
- 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.

By July 1, 2023, the division must maintain vacation rental license information in a readily accessible electronic format sufficient to facilitate prompt compliance.

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

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<sup>37</sup> Chapters 718, 719, or 720, F.S., relate to the regulation and governance of condominium, cooperative, and homeowners' associations, respectively.

to enforce a cease and desist order. If the Department of Business and Professional Regulation (DBPR) 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.

The bill authorizes the division to fine an advertising platform an amount not to exceed \$1,000 for a violation of the provisions in the bill or rules of the division.

The bill provides that the advertising platform requirements in the bill do not create a private right of action against advertising platforms.

### ***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>38</sup> 125.0108,<sup>39</sup> 205.044,<sup>40</sup> 212.03,<sup>41</sup> 212.0305,<sup>42</sup> and 212.055, F.S.,<sup>43</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.

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

<sup>38</sup> Section 125.0104, F.S., relates to the local option tourist development tax.

<sup>39</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>40</sup> Section 205.044, F.S., relates to the merchant business tax measured by gross receipts.

<sup>41</sup> Section 212.03, F.S., relates to the transient rentals tax.

<sup>42</sup> Section 212.0305, F.S., relates to convention development taxes.

<sup>43</sup> Section 212.055, F.S., relates to discretionary sales taxes.

sheriff's office no later than 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, 2023.

## **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:**

Article VII, Section 19 of the Florida Constitution requires a "state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject." A "fee" is defined by the Florida Constitution to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service."

Article VII, Section 19 of the Florida Constitution also requires that a tax or fee raised by the Legislature must be approved by two-thirds of the membership of each house of the Legislature.

The bill does not impose or authorize a state tax or fee. The bill provides that a local government may not require a registration fee of more than \$50. Under the bill, a local government is not required to charge a registration fee.

### **E. Other Constitutional Issues:**

None.

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

The Revenue Estimating Conference determined that the provisions in the bill that require advertising platforms to collect and remit state and local sales taxes have no fiscal impact.<sup>44</sup>

**B. Private Sector Impact:**

Indeterminate. Vacation rental owners may incur local registration costs of up to \$50 if the local government in which the vacation rental is located adopts an ordinance, law, or regulation consistent with the provisions of this bill.

**C. Government Sector Impact:**

The DBPR estimates a cost of \$497,671 (\$435,974 recurring) to the Hotel and Restaurant Trust Fund and a need of six full-time positions (FTEs).<sup>45</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.<sup>46</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. The FDLE anticipates the need for four additional FTEs and additional costs related to updating to the programming for the registry for a total cost of \$693,730 and \$319,750 recurring to implement provisions of the bill.<sup>47</sup>

Local governments may see an increase in revenue from the local registration fee of up to \$50.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill amends s. 775.21, F.S., to require a sexual offender or predator to register at the local sheriff’s office no later than 5:00 p.m., 24 hours after establishing a temporary residence in a vacation rental. Under current law, a sexual offender or predator must register at the local

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<sup>44</sup> Revenue Impact Results, Revenue Estimating Conference, November 5, 2021.

<sup>45</sup> Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for SB 512*, at 6 (Oct. 15, 2021) (on file with the Senate Committee on Regulated Industries).

<sup>46</sup> Florida Department of Law Enforcement, *2022 Agency Legislative Bill Analysis for SB 512*, at 3 (Nov. 15, 2021) (on file with the Senate Committee on Regulated Industries).

<sup>47</sup> *Id.*

sheriff's office no later than 5:00 p.m., 48 hours after establishing a temporary residence in a vacation rental.

The FDLE has expressed "significant concerns"<sup>48</sup> with this provision in the bill. The FDLE notes that sexual offender and predator registration is a civil and regulatory process, not punishment. Its purpose is to protect the public by providing information and serving as an investigative tool for law enforcement. If the impact on sexual predator and offender registration is viewed as punishment or intended to prevent or limit the ability of sexual offenders and predators to travel freely within the state, the FDLE advises that these concerns may lead to significant litigation, in an area of law that has been closely examined and vetted through the courts and upheld as constitutional. Such litigation may jeopardize constitutionality, and therefore the viability, of Florida sexual offender and predator registration laws.<sup>49</sup>

### **VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 159.27, 212.03, 212.08, 316.1955, 404.056, 477.0135, 509.013, 509.032, 509.241, 509.261, 509.221, 553.5041, 559.955, 705.17, 705.185, 717.1355, 775.21, and 877.24.

This bill creates section 509.243 of the Florida Statutes.

### **IX. Additional Information:**

#### **A. Committee Substitute – Statement of Changes:**

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

None.

#### **B. Amendments:**

None.

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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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<sup>48</sup> *Id.* at 5.

<sup>49</sup> *Id.*