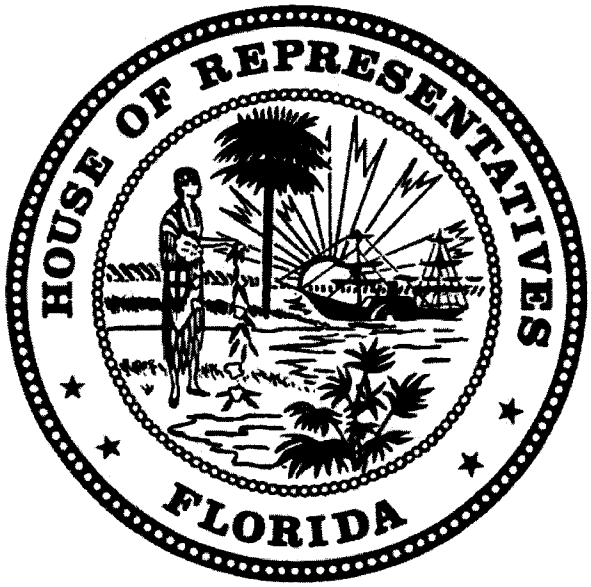


Commerce Committee

Thursday, February 27, 2020
8:00 AM –12:00 PM
Webster Hall (212 Knott)

Meeting Packet

Jose Oliva
Speaker

Mike La Rosa
Chair

The Florida House of Representatives

Commerce Committee

Jose Oliva
Speaker

Mike La Rosa
Chair

Meeting Agenda

Thursday, February 27, 2020
8:00 am – 12:00 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/CS/HB 65 Fireworks by Local, Federal & Veterans Affairs Subcommittee, Business & Professions Subcommittee, Rodriguez, A. M.
- HB 207 Acquisition of Water and Wastewater Systems by McClain
- CS/HB 295 Construction Defects by Civil Justice Subcommittee, Santiago
- CS/HB 537 Home-based Businesses by Business & Professions Subcommittee, Donalds
- CS/CS/HB 623 Community Associations by Civil Justice Subcommittee, Business & Professions Subcommittee, Shoaf
- CS/HB 723 Peer-to-Peer Car Sharing by Insurance & Banking Subcommittee, Fischer
- HB 771 Motor Vehicle Insurance by Grall
- CS/CS/HB 1339 Housing by Ways & Means Committee, Local, Federal & Veterans Affairs Subcommittee, Yarborough

- HB 7041 Litigation Financing Consumer Protection by Civil Justice Subcommittee, Leek

- HB 7099 Essential State Infrastructure by State Affairs Committee, Ingoglia

Consideration of the following proposed committee substitute(s):

- PCS for CS/CS/HB 895 – Insurance
- PCS for HB 1165 -- Beverage Law
- PCS for HB 1265 -- Verification of Employment Eligibility

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 65 Fireworks
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Business & Professions Subcommittee, Rodriguez, A. M. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	7 Y, 5 N, As CS	Brackett	Anstead
2) Local, Federal & Veterans Affairs Subcommittee	10 Y, 1 N, As CS	Moehrle	Miller
3) Commerce Committee		Brackett DB	Hamon K.W.H.

SUMMARY ANALYSIS

Federal laws regulate the manufacture, sale and use of fireworks. The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as well as the U.S. Consumer Product Safety Commission (CPSC) have general jurisdiction over what types of fireworks may be legally sold in the United States. Federal law sets the minimum standard. States are permitted to enact laws that are more stringent.

In Florida, the sale and use of fireworks are generally prohibited.

However, many exceptions to the prohibition exist. The most commonly used exceptions allow approved fireworks to be sold by a licensed retailer to a buyer who:

- has obtained a permit for a public display from a municipality or a board of county commissioners;
- is using the fireworks to scare birds away from agricultural works or fish hatcheries.

The bill creates an additional exception to the prohibition of the sale and use of fireworks.

The bill provides that federally approved consumer fireworks may be imported, sold, purchased, and used solely and exclusively for the following holidays:

- New Year's Eve, December 31st;
- New Year's Day, January 1st;
- Memorial day, the last Monday in May; and
- Independence Day, July 4th.

The bill also:

- States it is not intended to provide for the comprehensive regulation of fireworks nor is it intended to supersede any local government regulation relating to the use of fireworks;
- Provides that a person must be at least 18 years of age to purchase fireworks;
- Provides an affirmative defense for a retailer or seasonal retailer who acts in good faith and inadvertently sells fireworks to a minor; and
- Permits seasonal retailers to sell sparklers and fireworks from May 12th through June 1st.

The bill is not expected to have a fiscal impact on state and local governments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Chapter 791, F.S., regulates the sale and use of fireworks and sparklers in Florida. No person may offer for sale, sell at retail, or use or explode any fireworks unless they meet the provisions or exceptions in Florida law.[1] Sparklers are permitted under Florida law under certain conditions.

According to the American Pyrotechnics Association, 46 states plus the District of Columbia allow some or all types of consumer fireworks, three states (Ohio, Illinois, and Vermont) allow only wire or wood stick sparklers, and one state (Massachusetts) bans all consumer fireworks.[2]

Federal Regulation of Fireworks

Fireworks are regulated by the federal government though the ATF, and the CPSC.

Federal explosives laws categorize fireworks into three types - display fireworks, consumer fireworks, and articles pyrotechnic.[3]

Display Fireworks

"Display fireworks" are defined as "large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation." The ATF requires anyone engaging in the business of manufacturing, importing, or dealing in display fireworks to have an ATF explosive license, and anyone importing for their own use or receiving or transporting display fireworks to have an ATF permit.[4]

"Display fireworks" include but are not limited to:

- Aerial shells containing more than 2 grains of explosive materials;
- Aerial shells containing more than 40 grams of pyrotechnic compositions;
- Other display pieces that exceed the limits of explosive materials for consumer fireworks; and
- Fused set pieces containing components which together exceed 50 milligrams of salute powder.[5]

Consumer Fireworks

"Consumer fireworks" are defined as "any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission." Manufacturers of "consumer fireworks" must have an ATF license. However, the ATF generally does not regulate the importation, distribution, and storage of consumer fireworks.

---

[1] *See* ch. 791, F.S.

[2] The American Pyrotechnics Association was found in 1948, represents the entire fireworks industry, and works toward the responsible regulation of the fireworks industry. APA, *2019 State Fireworks Control Laws*, https://www.americanpyro.com/assets/docs/FactsandFigures/Rev2019%20State%20Laws%20Firework%20Map.pdf (last visited on Oct. 29, 2019).

[3] 27 C.F.R. § 555 (2019) & 27 C.F.R. § 555.11 (2019).

[4] 27 C.F.R. § 555.26 (2019) & 27 U.S.C. § 555.41 (2019).

[5] 27 C.F.R. § 555.11 (2019).

The definition also includes "some small devices designed to produce audible effects...such as":

- whistling devices,
- ground devices containing 50 mg or less of explosive materials, and
- aerial devices containing 130 mg or less of explosive materials."[6]

Articles Pyrotechnic

"Articles pyrotechnic" are defined as "pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use."[7] A manufacturer of articles pyrotechnics must have an ATF manufacturer's license.[8]

The Federal Hazardous Substances Act (FHSA)

The CPSC regulates the use of consumer fireworks under the FHSA.[9] The FHSA prohibits the sale to consumers of the most dangerous types of fireworks including:

- Large reloadable mortar shells;
- Cherry bombs;
- Aerial bombs;
- M-80 aerials; and
- Larger firecrackers containing more than 2 grains of explosive materials.[10]

Any person who imports, distributes, or sells a prohibited firework under the FHSA to a consumer is guilty of a misdemeanor and subject to a fine of not more than $500 and/or imprisonment for not more than 90 days. For second or subsequent offenses, or if the person intended to defraud or mislead, the person is subject to a fine of up to $250,000 and/or imprisonment for not more than 5 years. Any person who imports, distributes, or sells a prohibited firework under the FHSA to a consumer may also be subject to a civil penalty up to $100,000 for each violation and up to $15,000,000 for any series of violations.[11]

The determination of who may purchase and use consumer fireworks is left up to the states. However, the CPSC advises that young children should not be allowed to use consumer fireworks and older children should only be allowed to use consumer fireworks under the close supervision of an adult.[12]

The CPSC provides an annual report on the number of non-occupational, fireworks-related deaths and injuries in the U.S. The CPSC reported that in 2018 there were an estimated 9,100 injuries involving fireworks in the U.S. The CPSC also reported that there were at least five deaths including a 16 year old male in Florida who died after a mortar tube exploded in his hand.[13]

---

[6] 27 C.F.R. § 555.11 (2019).
[7] *Id.*
[8] 27 C.F.R. § 555.11 (2019); 27 C.F.R. § 555.141 (2019); ATF Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Are 'consumer fireworks' subject to regulation under the Federal explosive laws?*, https://www.atf.gov/explosives/qa/are-%E2%80%9Cconsumer-fireworks%E2%80%9D-subject-regulation-under-federal-explosives-laws (last visited on Oct. 29, 2019); ATF Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Are "Articles Pyrotechnic" subject to the requirements of the Federal explosive regulations?*, https://www.atf.gov/explosives/qa/are-%E2%80%9Carticles-pyrotechnic%E2%80%9D-subject-requirements-federal-explosives-regulations (last visited Oct. 29, 2019).
[9] 15 U.S.C. § 1261 (2019).
[10] 16 C.F.R. § 1500.17 (2019).
[11] *See* 15 U.S.C. § 1263 (2017); 15 U.S.C. § 1264 (2019); 18 U.S.C. § 3571 (2019).
[12] U.S. Consumer Product Safety Commission, *Fireworks Fact Sheet*, https://www.cpsc.gov/s3fs-public/Fireworks%20Fact%20Sheet%202019.pdf (last visited on Oct. 29, 2019).
[13] Tu, Yongling, *2018 Fireworks Annual Report: Fireworks-Related Deaths and Emergency Department-Treated Injuries During 2018*, 1 & 8 https://www.cpsc.gov/s3fs-public/Fireworks_Report_2018.pdf?5kZ4zdr9jPFyhPmeg3MoL35mGX8fB0s7 (June 2019).

Florida Regulation of Fireworks and Sparklers

In Florida, the sale, purchase, and use of fireworks is prohibited unless the seller, buyer, or user falls under an exemption. Fireworks are defined as "any combustible or explosive composition or substance or combination of substances or, except as hereinafter provided, any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation."

Fireworks include:

- Blank cartridges and toy cannons in which explosives are used;
- Balloons which require fire underneath to propel them;
- Firecrackers;
- Torpedoes;
- Skyrockets;
- Roman candles;
- Dago bombs; and
- Any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance.[14]

Fireworks do not include the following, which the sale and use of is permitted under certain conditions:

- Sparklers[15] approved by the State Fire Marshal;
- Toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing that a person's hand cannot come into contact with the cap when in place for the explosion;
- Toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture; and
- A trick noisemaker, which is a device that produces a small report intended to surprise a user, including a:
    - Party popper;
    - Booby trap;
    - Snapper;
    - Trick match;
    - Cigarette load; and
    - Auto burglar alarm.
- The following novelties:
    - A snake or glow worm, which is a pressed pellet of not more than 10 grams of pyrotechnic composition that produces a large, snakelike ash which expands in length as the pellet burns and that does not contain mercuric thiocyanate; and
    - A smoke device, which is a tube or sphere containing not more than 10 grams of pyrotechnic composition that, upon burning, produces white or colored smoke as the primary effect.[16]

Any person who illegally purchases, uses, or sells fireworks commits a first-degree misdemeanor.[17]

Sparklers

All sparklers sold in Florida must be approved by the State Fire Marshal. Sparklers not approved by the State Fire Marshal are considered fireworks. Any person wishing to sell a product as a sparkler in Florida must first submit the product to the State Fire Marshal for testing to determine if the product

[14] Ss. 791.01(4)(a) & 791.02(1), F.S.
[15] S. 791.01(8), F.S. (Sparklers are hand-held or ground-based devices that emit showers of sparks when they are burned. Sparklers do not explode, detonate, contain explosive compounds, are not self-propelled, and have a limited number of combustible chemicals.)
[16] S. 791.01(4)(b) & (c), F.S.
[17] S. 791.06, F.S.

meets the definition of a sparkler. On February 1 of each year, the State Fire Marshal must publish a list of the approved sparklers. All approved sparklers may be sold until January 31st of the following year.[18]

Any person who alters an approved sparkler, so that it is no longer a sparkler, and subsequently sells the altered sparkler as an approved sparkler commits a first-degree misdemeanor. Any person who fraudulently represents a product that is not an approved sparkler as an approved sparkler commits a first-degree misdemeanor.[19]

Public Displays of Fireworks

Pursuant to s. 791.012, F.S, the outdoor display of fireworks is governed by the National Fire Protection Association (NFPA) 1121, Code for Fireworks Display, 1995 Edition, approved by the American National Standards Institute.[20] Any state, county, or municipal law, rule, or ordinance may provide for more stringent regulations, but in no event may any such law, rule, or ordinance provide for less stringent regulations for the outdoor display of fireworks. However, the Code for Fireworks Display does not govern the display of any fireworks on private residential property.[21]

Florida allows the public display of fireworks in municipalities if police and fire chiefs have determined that the display is done by a competent supervisor, and the display does not endanger any person and is not hazardous to property.[22]

Supervised public displays of fireworks are permitted outside municipalities by fair associations, amusement parks, and other organizations or groups of individuals if the person doing the display obtains a bond of not less than $500. The bond is for the payment of damages that may be caused to a person or property by the fireworks display, any acts of the person doing the display, his or her agents, employees, or subcontractors.[23]

Municipalities and the boards of county commissioners have the power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks. Application for a permit must be made in writing at least 15 days in advance of the display. Upon obtaining a permit a person may engage in the lawful sale, possession, and distribution of fireworks for the display. Permits may not be transferred.[24]

Distributors, Manufacturers, Wholesalers, and Retailers

In order to be a retailer, manufacturer, wholesaler, or distributor[25] a person must register annually with the State Fire Marshal. Depending on the type of registration, the registrant is able to manufacture, construct, or sell sparklers and **may also sell fireworks**:

- To other registered wholesalers, manufacturers, and distributors;

---

[18] Ss. 791.01(8) & 791.013(1), F.S.

[19] S. 791.013(2), F.S.

[20] The National Fire Protection Association was founded in 1896 and delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. The American National Standards Institute is a non-profit organization that aims to strengthen the U.S. market place and assure the safety and health of consumers by creating and promulgating thousands of standards and guidelines. NFPA, *About NFPA*, http://www.nfpa.org/about-nfpa (last visited on Oct. 29, 2019); ANSI, *About ANSI*, https://www.ansi.org/about_ansi/overview/overview?menuid=1 (last visited on Oct. 29, 2019).

[21] S. 791.012, F.S.

[22] S. 791.02(1), F.S.

[23] *Id.* & S. 791.03, F.S.

[24] S. 791.02(1), F.S.

[25] S. 791.01(1), (5), & (9), F.S. (A distributor is defined as any person who sells sparklers to a wholesaler. A manufacturer is defined as any person engaged in the manufacture or construction of sparklers in Florida. A wholesaler is defined as any person engaged in the business of selling sparklers to a retailer.)

- That are to be shipped out of Florida;
- To anyone holding a public firework display permit from a municipality or a board of county commissioners; and
- To a buyer who is using the fireworks to scare birds away from agricultural works or fish hatcheries.[26]

Retailers and seasonal retailers may not sell sparklers, fireworks, or any other product authorized for sale by ch. 791, F.S., unless the retailer or seasonal retailer obtained the product from a registered manufacturer, distributor, or wholesaler.

Retailers and seasonal retailers are also required to keep, at every location where sparklers are sold, evidence of purchases from manufacturers, distributors, or wholesalers. The evidence must have the manufacturer, distributor, or wholesaler's registration number, and the specific items purchased by the retailor or seasonal retailor. Each seasonal retailer must also display a copy of his or her registration at each seasonal location.[27]

There are two types of retailers in Florida:
- A retailer, who is any person at a fixed place of business who sells sparklers to consumers at retail; and
- A seasonal retailer, who is any person engaged in the business of selling sparklers to consumers at retail from June 20th through July 5th and December 10th through January 2nd.[28]

A retailer who sells sparklers at multiple locations may submit one registration form as long as the retailer lists every location on the registration form.[29] The registration form must include the business name, address, telephone number, corporate officers (if a corporation), and a contact person. Annual registration fees are:
- $1,000 for registration as a manufacturer, distributor, or wholesaler;
- $200 for registration as a seasonal retailer; and
- $15 for each location registered by a non-seasonal retailer.[30]

Agricultural Exception to Fireworks Prohibition

Pursuant to s. 791.07, F.S., nothing shall prohibit the importation, purchase, sale, or use of fireworks to be used solely and exclusively to scare birds from agricultural works and fish hatcheries. Such use is governed by rules prescribed by the Department of Agriculture and Consumer Services (DACS).

Current law does not provide for an age restriction for the purchase of fireworks to scare birds from agricultural works and fish hatcheries. However, on February 13, 2018, testimony was offered during the regular meeting of the Florida House of Representatives' Commerce Committee indicating that it is standard practice for retailers to refuse to sell fireworks to minors under the agricultural exception because minors cannot legally sign the legal form required by the retailers.[31]

DACS has adopted rules that require any person who wishes to use firecrackers to scare birds first file a written statement, with the sheriff in the county where the agricultural work or fish hatchery is located, attesting that he or she intends to use the firecrackers solely for the purpose of scaring birds.[32] A

[26] Ss. 791.04 & 791.07, F.S.
[27] S. 791.02(2), F.S.
[28] S. 791.01(6) & (7), F.S.
[29] S. 791.015(1), F.S.
[30] S. 791.015(3), F.S. & Rule 69A-50.005, F.A.C.
[31] *See* The Florida Channel, *2/13/2018 House Commerce Committee.*
[32] Rule 5A-3.001, F.A.C.

person may purchase firecrackers from an authorized seller upon presenting the seller a copy of the written statement he or she has filed with the sheriff.[33]

Local news stations have reported that the ability to buy fireworks in order to scare birds is a "loophole" to the prohibition of the purchase of fireworks by people who are not registered with the State Fire Marshal. According to the local news stations, retailers require a person to sign a form attesting that they are purchasing fireworks to scare birds from agricultural works or fish hatcheries in order to purchase the fireworks.[34] In 2002, the Third District Court of Appeal held that it is not the responsibility of a seller to check the veracity of a buyer's form attesting that the fireworks are to be used to scare birds.[35]

Consumer Fireworks Task Force/Limits on Retail Sales Facilities & Local Regulations (2007 Provisions)

The 2007 Legislature[36] found that:

- The state regulation of consumer fireworks in Florida provides an insufficient definition of consumer fireworks and related products used by consumers;
- There is a need for better training and education concerning the safe use of consumer fireworks;
- There should be a mechanism to help local governments fund the cleanup following the use of consumer fireworks on public property;
- Local government regulation of the agricultural uses authorized by s. 791.07, F.S., may be inconsistent with legitimate agricultural purposes;
- There is a need for consumer education relating to safety standards in the use of consumer fireworks;
- There is need for standards concerning tents and other temporary retail facilities selling consumer fireworks; and
- The state would benefit from additional funding for the training and education of fire officials.

The Consumer Fireworks Task Force (Task Force), housed within DACS, was established for the purpose of studying issues concerning consumer fireworks, including the:

- Proper use of consumer fireworks;
- The regulation of sales and temporary sale facilities;
- Regulation of the hours and location of use;
- Property zoning classifications for sale facilities;
- Funding options for fire official training and education; and
- Funding options for cleanup of expended consumer fireworks products.[37]

In 2007, limits on the number of retail sales facilities for the sale of consumer fireworks were established:

- A new permanent fireworks retail sales facility may not be opened in Florida after March 8, 2007, for the purpose of selling fireworks in accordance with the agricultural exception, unless construction for the permanent retail sales facility received site plan approval and construction began on or before March 8, 2007; and

---

[33] Rule 5A-3.002, F.A.C.

[34] Jenna Bourne, *Loophole in Florida fireworks law can lead to injuries, death*, Action News Jax (Jul. 4, 2019), https://www.actionnewsjax.com/news/local/loophole-in-florida-fireworks-law-can-lead-to-injuries-death/963975096; Nicki Ross, *Fireworks are big business – and illegal in Florida,* The Daytona Beach News-Journal (Jul. 3, 2019), https://www.news-journalonline.com/news/20190703/fireworks-are-big-business---and-illegal-in-florida; WFTX Digital Team, *Police: Most fireworks are illegal in Florida*, Fox4 Southwest Florida (Jul. 4, 2019) https://www.fox4now.com/news/local-news/police-most-fireworks-are-illegal-in-florida.

[35] *See State v. Miketa*, 824 So. 2d 970 (Fla. 3d DCA 2002).

[36] Ch. 2007-67, s. 10(1), Laws of Fla. (In 2007, the Legislature passed and the Governor signed into law Senate Bill 1372.)

[37] Ch. 2007-67, s. 10(2)(a), Laws of Fla.

- The number of permits for temporary fireworks retail sales facilities, such as tents, issued after March 8, 2007, by a county, municipality, or other unit of local government, may not exceed the number of permits the governmental entity issued for facilities selling fireworks in accordance with the agricultural exception during the 2006 calendar year.[38]

Local governments were are also prohibited from adopting any ordinance, rule, or regulation after March 8, 2007, that directly prohibits or directly interferes with the safety standards established by state law or the right to purchase, sell, use or possess consumer fireworks.[39]

The 2007 provisions were enacted with the expectation that the Legislature would review the Task Force's recommendations, and decide whether to adopt comprehensive regulations for the use of consumer fireworks based on those recommendations.[40] Therefore, the 2007 provisions were anticipated to remain in effect until the Legislature reviewed the Task Force's recommendations. However, the 2007 provisions also provided that they would expire if the Legislature adopted comprehensive regulations for the use of consumer fireworks on or before July 1, 2008.[41]

Although the 2007 provisions were enacted pending the Legislature's review of the Task Force's recommendations or upon the enactment of comprehensive regulations for the use of consumer fireworks, the 2007 provisions remain in effect today. Changes were not made to such provisions after the Task Force completed its report and submitted it to the Legislature on January 15, 2008.[42]

In June 2016, the City of Altamonte Springs requested an advisory opinion from the Florida Office of the Attorney General (AG) to determine if the City could issue a new permit for the sale of fireworks. The AG determined that local governments are prohibited from allowing new facilities to be opened for the sale of fireworks, and local governments may only issue as many permits allowing temporary facilities for the sale of fireworks as they had issued in 2006.[43]

State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire. Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.[44]

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years. The FFPC includes national fire safety and life safety standards set forth by the NFPA, including the NFPA's Fire Code (1), Life Safety Code (101) and Guide on Alternative Approaches to Life Safety (101A).[45]

---

[38] Ch. 2007-67, s. 10(5), Laws of Fla.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] 2016-05 Fla. Op. Att'y Gen. 37 (2016).
[43] *Id.*
[44] S. 633.104, F.S.
[45] S. 633.202(2), F.S.

According to DFS, last year there were 108 fires in Florida where fireworks were the reported cause. Those fires resulted in an estimated $287,751 in property damage. In 2017, there were 173 fires in Florida where fireworks were the reported cause. Those fires resulted in one death and $500,660 in property damage.[46]

Effect of the Bill

The bill creates an exception to the prohibition on the sale and use of fireworks.

The bill provides that fireworks are not prohibited from being imported, sold, purchased, or used, or to be used, if they are solely and exclusively for the following holidays:

- New Year's Eve, December 31st;
- New Year's Day, January 1st;
- Memorial day, the last Monday in May; and
- Independence Day, July 4th.

The bill states that it is not intended to provide for the comprehensive regulation of fireworks nor is it intended to supersede any local government regulation relating to the use of fireworks. This will maintain the 2007 provisions relating to the opening of new permanent retail sales facilities, and the issuance of permits for temporary retail sales facilities in greater numbers than were permitted in 2006. It will also maintain the 2007 provisions relating to the prohibition of the enactment of local government ordinances that prohibit or directly interfere with the safety standards established by state law or the right to purchase, sell, use or possess consumer fireworks.

The bill provides that a person must be at least 18 years of age to purchase fireworks. The bill also provides an affirmative defense to a retailer or seasonal retailer who sells fireworks to a minor. A retailer or seasonal retailer has an affirmative defense if at the time the fireworks were sold, the retailer, seasonal retailer, or one of their employees or agents:

- Carefully checked a driver license, an identification card issued by this state or another state of the United States, a passport, or a United States Armed Services identification card presented by the buyer; and
- Acted in good faith and in reliance upon the representation and appearance of the buyer in the belief that the buyer was 18 years of age or older.[47]

The bill also permits seasonal retailers to sell sparklers and fireworks from May 12th through June 1st.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends s. 791.01, F.S., revising the definition of the term "seasonal retailor."

Section 2. Creating s. 791.08, F.S., authorizing the purchase, sale, and use of fireworks on certain holidays. Providing the statute neither creates a comprehensive regulation of fireworks nor supersedes local regulation. Providing an age requirement to purchase fireworks, and providing an affirmative defense for certain retailers.

Section 3. Provides the act is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[46] Florida Department of Financial Services, Agency Analysis of 2020 House Bill 65, p. 4 (Sep. 20, 2019).

[47] Current law provides a similar affirmative defense for retailers who inadvertently sell tobacco products, nicotine products, or nicotine dispensing devices to a person under 18 years of age. Ss. 569.101 & 877.112, F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments

D. FISCAL COMMENTS:

A potential increase in the purchase and use of fireworks may have a positive economic impact on the private sector.

According to DFS, last year there were 108 fires in Florida where fireworks were the reported cause. Those fires resulted in an estimated $287,751 in property damage. In 2017, there were 173 fires in Florida where fireworks were the reported cause. Those fires resulted in one death and $500,660 in property damage.[48]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill neither requires nor provides authority for administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 6, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

[48] Florida Department of Financial Services, Agency Analysis of 2020 House Bill 65, p. 4 (Sep. 20, 2019).

- Includes New Year's Eve as a designated holiday;
- Includes Memorial Day in the list of dates "seasonal retailers" are permitted to sell fireworks;
- Provides that a person must be at least 18 years of age to purchase fireworks;
- Provides an affirmative defense for a retailer who acts in good faith and inadvertently sells fireworks to a minor; and
- Removes the rule-making requirement.

On December 11, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarifies that the bill is not intended to provide for the comprehensive regulation of fireworks nor is it intended to supersede local regulation of the use of fireworks as provided in ch. 2007-67, Laws of Fla.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to fireworks; amending s. 791.01, F.S.; revising the definition of the term "seasonal retailer"; creating s. 791.08, F.S.; defining the term "designated holiday"; providing an exemption for the purchase, sale, or use of fireworks used or to be used solely and exclusively during a designated holiday; providing construction; providing an age requirement to purchase fireworks; providing an affirmative defense for certain retailers; providing an effective date.

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

Section 1. Subsection (7) of section 791.01, Florida Statutes, is amended to read:

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

(7) "Seasonal retailer" means any person engaged in the business of selling sparklers at retail in this state from May 12 through June 1, from June 20 through July 5, and from December 10 through January 2 of each year.

Section 2. Section 791.08, Florida Statutes, is created to read:

791.08 Use during designated holidays; exemption.—

(1) As used in this section, the term "designated holiday"

CODING: Words stricken are deletions; words underlined are additions.

means:

(a) New Year's Eve, December 31;

(b) New Year's Day, January 1;

(c) Memorial Day, the last Monday in May; or

(d) Independence Day, July 4.

(2) This chapter does not prohibit the offer for sale, sale, purchase, or use of fireworks that are to be used or used solely and exclusively during a designated holiday. This section is not intended to provide for the comprehensive regulation of fireworks as described in s. 10(5), chapter 2007-67, Laws of Florida, or to supersede any local government regulation relating to the use of fireworks as provided in s. 10(5), chapter 2007-67, Laws of Florida.

(3) Any person who purchases fireworks must be 18 years of age or older.

(4) A retailer or seasonal retailer charged with unlawfully selling fireworks to a person under 18 years of age has a complete defense if, at the time the fireworks were sold, the retailer, seasonal retailer, or an employee or agent of the retailer or seasonal retailer carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States Armed Services identification card presented by the buyer, and acted in good faith and in reliance upon the representation and appearance of the buyer in the belief that the buyer was 18

years of age or older.

Section 3. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

COMMERCE COMMITTEE

HB 65 by Rep. Rodriguez, A.M.
Fireworks

AMENDMENT SUMMARY
February 27, 2020

Amendment 1 by Rep. Rodriguez, A.M. (Strike-all amendment):
The strike-all amendment:

- Removes Memorial Day as a designated holiday for the sale of fireworks, and the provision allowing seasonal retailers to sell fireworks during Memorial Day.

The remainder of the bill's provisions are unchanged by the strike-all amendment.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative Rodriguez, A. M. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 791.08, Florida Statutes, is created to read:

791.08 Use during designated holidays; exemption.—

(1) As used in this section, the term "designated holiday" means:

(a) New Year's Eve, December 31;

(b) New Year's Day, January 1; or

(c) Independence Day, July 4.

(2) This chapter does not prohibit the offer for sale, sale, purchase, or use of fireworks that are to be used or used solely and exclusively during a designated holiday. This section

is not intended to provide for the comprehensive regulation of fireworks as described in s. 10(5), chapter 2007-67, Laws of Florida, or to supersede any local government regulation relating to the use of fireworks as provided in s. 10(5), chapter 2007-67, Laws of Florida.

(3) Any person who purchases fireworks must be 18 years of age or older.

(4) A retailer or seasonal retailer charged with unlawfully selling fireworks to a person under 18 years of age has a complete defense if, at the time the fireworks were sold, the retailer, seasonal retailer, or an employee or agent of the retailer or seasonal retailer carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States Armed Services identification card presented by the buyer, and acted in good faith and in reliance upon the representation and appearance of the buyer in the belief that the buyer was 18 years of age or older.

Section 2. This act shall take effect upon becoming law.

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

Remove everything before the enacting clause and insert:

An act relating to fireworks; creating s. 791.08, F.S.; defining the term "designated holiday";

providing an exemption for the purchase, sale, or use of fireworks used or to be used solely and exclusively during a designated holiday; providing construction; providing an age requirement to purchase fireworks; providing an affirmative defense for certain retailers; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 207 Acquisition of Water and Wastewater Systems
SPONSOR(S): McClain
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	15 Y, 0 N	Keating	Keating
2) Government Operations & Technology Appropriations Subcommittee	11 Y, 0 N	Helpling	Topp
3) Commerce Committee		Keating CK	Hamon K.W.H.

SUMMARY ANALYSIS

When the Public Service Commission approves a sale, assignment, or transfer of an existing water or wastewater utility system to a PSC-regulated utility, it establishes a rate base value for the acquired utility system. The value of the acquired utility's rate base is determined using the utility's net book value, i.e., the original cost of the utility's assets when first dedicated to public service, less depreciation. This rate base is the amount upon which the acquiring utility may earn a fair rate of return established by the PSC.

If the purchase price of a utility system is greater than its net book value, no part of the difference is included in rate base absent a showing of extraordinary circumstances. This showing may be made through evidence that the transaction is anticipated to yield cost efficiencies and improvements in service quality and regulatory compliance, among other things. If the PSC determines that extraordinary circumstances exist, it will allow the acquiring utility to include all or part of the difference in its rate base as a "positive acquisition adjustment." This adjustment will be reflected in the utility's rates that are set during the utility's next general rate case.

The bill allows certain PSC-regulated water and wastewater utilities (those with over 10,000 customers) who acquire an existing water or wastewater utility system to establish rate base for the acquired utility system based on the lesser of: (1) the purchase price negotiated by the two utilities; or (2) the "fair market value" of the acquired utility, as determined by the average of appraisals conducted by two licensed appraisers chosen from a list established by the PSC. Appraisal fees and transaction costs may also be included. The bill provides that one appraiser will represent and be paid by the acquiring utility, and that a second appraiser will represent and be paid by the utility to be acquired. The bill provides some guidelines for the appraisals, including the use of a required engineering assessment. To use this fair market value approach, the utility must provide the PSC certain information specified in the bill. If the required information is provided, the PSC must approve an application within 6 months.

The bill is not expected to have a fiscal impact on state or local governments. The bill may encourage transactions involving the purchase of smaller utility systems by eligible utility systems. In some cases, these transactions may yield needed infrastructure improvements, cost efficiencies, and improvements in service quality and regulatory compliance. Where such benefits are achieved, the combined rate impact of these benefits may or may not outweigh the rate impact of valuing the acquired utility system's rate base above the system's net book value. Thus, in some cases, the bill could result in customer rates being higher than they otherwise would be solely due to valuation of the acquired utility system.

The six month approval process created in the bill may require additional PSC resources but the amount is unknown at this time. See *Fiscal Comments*.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Regulated Water and Wastewater Utilities

In various areas throughout Florida, water and wastewater services are provided through privately-owned and operated utilities. These privately-owned utilities, sometimes referred to as investor-owned utilities, range in size from very small systems, owned by individuals as sole proprietorships and serving only a few dozen customers in a small neighborhood, to systems owned by large interstate corporations which serve tens of thousands of customers in multiple Florida counties.

For privately-owned utilities operating within a single Florida county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.[1] Regardless of whether the county has opted to regulate those utilities, the PSC has jurisdiction over all water or wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.[2] As of December 2018, the PSC had jurisdiction over 150 utilities in 38 counties.[3] Still, the vast majority of water and wastewater customers in the state are served by water and wastewater utilities not regulated by the PSC, primarily by systems owned, operated, managed, or controlled by governmental authorities.

For each utility within its jurisdiction, the PSC has exclusive authority to regulate the utility's rates and service.[4] The PSC must establish rates that are just, reasonable, compensatory, and not unfairly discriminatory.[5] In doing so, the PSC must consider the value and quality of the service and the cost of providing the service, which includes, but is not limited to: debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service.[6] The PSC has consistently interpreted the "investment of the utility" to be the original cost of the utility's property when first dedicated to public service.[7]

Acquisition of Utility Systems

Each utility subject to the PSC's jurisdiction must obtain a certificate of authorization to provide water or wastewater service.[8] A PSC–regulated utility may not sell, assign, or transfer its certificate of authorization, facilities, or majority organizational control without approval by the PSC. Likewise, PSC approval is required for the transfer of a utility system exempt from PSC jurisdiction, such as a system owned or operated by a governmental authority, to a PSC-regulated utility. To grant approval, the PSC must determine that the sale, assignment, or transfer is in the public interest and that the acquiring utility will fulfill the commitments, obligations, and representations of the utility to be acquired.[9] The PSC considers, among other things, the financial ability of the buyer to maintain and operate the acquired utility and the technical ability of the buyer to provide service.[10]

---

[1] S. 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this election only after 10 continuous years of PSC regulation.
[2] *Id.*
[3] Florida Public Service Commission, *Facts and Figures of the Florida Utility Industry*, p. 31 (Jun. 2019).
[4] S. 367.011, F.S.
[5] S. 367.081, F.S.
[6] *Id.*
[7] Florida Public Service Commission (FPSC), Agency Analysis of 2020 House Bill 207, p. 1 (Jan, 6, 2020).
[8] S. 367.031, F.S.
[9] S. 367.071(1), F.S.
[10] Rule 25-30.037 (2), F.A.C.

When the PSC approves a sale, assignment, or transfer of an existing utility system to a PSC-regulated utility, the PSC may establish the rate base for the utility being transferred.[11] The PSC establishes the value of an existing utility's rate base using "original cost." Using original cost, the value of a utility's rate base is determined using the depreciated original cost, or net book value, of the property devoted to the public service. This rate base is the amount upon which the utility may earn a fair return, as established by the PSC.[12]

A utility system may be acquired at a price higher or lower than the net book value of its assets. If the purchase price is greater than net book value, no part of the difference is included in a utility's rate base absent a showing by the utility of extraordinary circumstances.[13] In determining whether a utility has demonstrated extraordinary circumstances, the PSC will consider evidence including:

- Anticipated improvements in quality of service;
- Anticipated improvements in compliance with regulatory mandates;
- Anticipated rate reductions or rate stability over a long-term period;
- Anticipated cost efficiencies; and
- Whether the purchase was made as part of an arms-length transaction.[14]

If the PSC determines that extraordinary circumstances exist, it will allow the acquiring utility to include all or part of the difference in its rate base as a "positive acquisition adjustment." This adjustment will be reflected in the utility's rates that are set during the utility's next general rate case.

A review of 78 water and wastewater utility transfers addressed by the PSC between August 15, 2002,[15] and September 14, 2018, shows that the purchase price of a utility system exceeded its net book value in 39 cases. A positive acquisition adjustment was requested in two of those cases, but the requests were withdrawn prior to the PSC's decision in each case.

Effect of Proposed Changes

The bill allows certain PSC-regulated water and wastewater utilities who acquire an existing water or wastewater utility system to choose to establish rate base for the acquired utility system without regard to the system's original cost. Instead, such utilities may elect to establish rate base for the acquired system based on the lesser of: (1) the purchase price negotiated by the two utilities; or (2) the "fair market value" of the acquired utility, as determined by the average of appraisals conducted by two licensed appraisers chosen from a list established by the PSC. The acquired system's rate base may also include reasonable fees paid to appraisers, if approved by the PSC, and reasonable transaction and closing costs incurred by the acquiring utility. If the rate base established through this mechanism exceeds the acquired utility system's net book value, the effect is the same as if the acquiring utility had received a positive acquisition adjustment that increases the value of the acquired system's rate base. No consideration of anticipated benefits is required.

The bill provides that one appraiser will represent and be paid by the acquiring utility, and that a second appraiser will represent and be paid by the utility to be acquired. The bill does not specify who may choose the two appraisers. The bill requires each appraiser to determine the fair market value of the utility to be acquired by using the Uniform Standards of Professional Appraisal Practice[16] and

[11] S. 367.071(5), F.S.
[12] FPSC, *supra* note 7, at 1.
[13] Rule 25-30.0371(2), F.A.C.
[14] *Id.*
[15] The PSC's rule on positive acquisition adjustments was adopted August 4, 2002.
[16] The Uniform Standards of Professional Appraisal Practice (USPAP) is the generally recognized ethical and performance standards for the appraisal profession in the United States. USPAP was adopted by Congress in 1989, and contains standards for all types of appraisal services, including real estate, personal property, business, and mass appraisal. *See* The Appraisal Foundation, *What is USPAP?*,

employing cost, market, and income approaches.[17] The bill provides that the original source of funding for the utility being acquired is not relevant for purposes of each appraiser's evaluation of fair market value.

Under the bill, the acquiring utility and the utility system being acquired must jointly retain a licensed engineer to assess the tangible assets of the system being acquired. The bill specifies that this assessment must be used by the two appraisers chosen to determine the fair market value of the system being acquired.

A utility that chooses to use this mechanism to establish rate base for an acquired utility system must submit an application to the PSC that includes the following:

- Copies of the two required appraisals performed by the chosen appraisers, including the average of the appraisals;
- The required engineering assessment, including each deficiency identified in the engineering assessment and a 3-year plan for prudent and necessary infrastructure improvements;
- The projected rate impact for the selling utility's customers for the next 5 years;
- The contract of sale;
- The estimated appraisal fees, and the estimated transaction and closing costs to be incurred by the acquiring utility; and
- A tariff, including rates equal to the rates of the utility to be acquired.

If the utility's application includes all of these required elements, the bill provides that the PSC must issue a final order approving or denying the application within 6 months of filing, though the bill does not specify any grounds for denial. The order must indicate the rate base value established through this mechanism for the acquired utility system.

The bill specifies that it applies only to acquiring utilities that provide water and wastewater services to more than 10,000 customers and are engaged in a "voluntary and mutually agreeable" acquisition of a water and wastewater system. Currently, it appears that there are three PSC-regulated utilities to which the bill may apply.[18] All other PSC-regulated utilities that acquire a water or wastewater system would continue to operate under the PSC's current rules that use the original cost approach to establish rate base and that allow a positive acquisition adjustment only upon a demonstration of extraordinary circumstances.

If the mechanism created by the bill is used to establish rate base for an acquired utility system, that rate base value must be used by the PSC to establish rates for the acquiring utility during the utility's next general rate case. The bill specifies that the PSC, in setting future rates for customers of the acquired system, may classify the system as a separate entity, consistent with the public interest.

B. SECTION DIRECTORY:

Section 1. Creates s. 367.0712, F.S., related to the determination of rate base value for an acquired water or wastewater utility system.

Section 2. Provides an effective date of July 1, 2020.

---

https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbfa-41b3-9878-fac35923d2af (last visited Feb. 24, 2020).

[17] The cost approach considers the current cost of reproducing or replacing a building, minus an estimate for depreciation, plus the value of the land (and entrepreneurial incentive, if applicable). The market (sales comparison) approach considers the value indicated by recent sales of comparable properties on the market. The income approach considers the value that the property's net earning power will support. *See* The Appraisal Foundation, *Understanding the Appraisal*, https://www.appraisalinstitute.org/assets/1/7/understand_appraisal_1109_(1).pdf (last visited Feb. 24, 2020).

[18] FPSC, *supra* note 7, at 4. As noted in the *Drafting Issues or Other Comments* section of this analysis, this provision of the bill could be clarified as to its specific application.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage the three eligible utilities to acquire smaller utility systems, potentially resulting in better access to low cost capital for infrastructure improvements[19] that may be needed for the acquired systems. Further, the acquisition of a smaller utility system by an eligible utility may result in other cost efficiencies and improvements to quality of service and regulatory compliance.

While these results are desirable, there is no guarantee that they will occur,[20] as they are not required and will depend on the specific circumstances surrounding each individual acquisition. If economic efficiencies and lower capital costs are achieved, the combined rate impact of these benefits may or may not outweigh the rate impact of valuing the acquired utility system's rate base above the system's net book value. Thus, the bill could result in customer rates being higher than they otherwise would be solely due to valuation of the acquired utility system.[21]

The owners of acquired utility systems may benefit more often from purchase prices above their net book value and, therefore, may be more willing to sell to a larger utility that may provide cost efficiencies, better management, and infrastructure improvements.

D. FISCAL COMMENTS:

The bill provides that the PSC must issue a final order approving or denying an application within six months of filing. The PSC asserts that compliance with this time limit will require all utility transfers of this type to be set directly for a formal administrative hearing, which may impose additional resource costs on the utilities and customer representatives, including the Office of Public Counsel.[22] However, because the bill does not establish grounds for denial of a complete application, the approval process may not involve significant hearing resources.

---

[19] *Id.* at 2. If any such improvements are made, the impact of those improvements on rate base (and, in turn, customer rates) would be in addition to the impact of the acquisition itself on rate base.

[20] *Id.*

[21] *Id.*

[22] *Id.* at 3.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to adopt implementing rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Appraisals

The bill does not specify who may choose the two appraisers used to determine a utility system's fair market value. The bill could be clarified on this point.

The PSC notes that it has no expertise in property appraisal and suggests that an agency with such expertise may be a more appropriate choice to establish the list of approved appraisers required by the bill.[23]

While the bill does not specify who may choose the two appraisers, the bill provides that one appraiser will represent and be paid by the acquiring utility and the other appraiser will represent and be paid by the utility system being acquired. Thus, it appears that one appraiser effectively works for the buyer and the other effectively works for the seller. Under the bill, both parties stand to benefit from a higher valuation of the utility system to be acquired: the seller's proceeds would be higher, and the buyer would ultimately be authorized to earn a return on a higher rate base. This may create a perverse incentive for the appraisals to come in higher than they might otherwise.

Other Drafting Issues

Under the bill, the acquiring utility and the utility system being acquired must jointly retain a licensed engineer to assess the tangible assets of the system being acquired. The bill does not specify what type of information this assessment should include. This may be clarified through implementing rules.

The bill specifies that it applies only to "acquiring utilities that provide water and wastewater services to more than 10,000 customers and are engaged in a voluntary and mutually agreeable acquisition of a water and wastewater system." A strict reading of this provision makes the bill applicable only to utilities that offer *both* water and wastewater services to more than 10,000 customers. If the intent is to make the bill applicable to utilities that offer *either* water *or* wastewater services to more than 10,000 customers, this provision could be clarified. Further, a strict reading of this provision makes the bill apply only to the acquisition of a water *and* wastewater system. Because water and wastewater systems are usually separate systems, this provision could be clarified to specify that it applies to acquisition of a water system and to acquisition of a wastewater system.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[23] *Id.* at 4.

A bill to be entitled

An act relating to acquisition of water and wastewater systems; creating s. 367.0712, F.S.; authorizing certain water and wastewater utilities to establish a rate base value by using the fair market value when acquiring a utility system; establishing a procedure to determine the fair market value; requiring the rate base value to be reflected in the acquiring utility's next rate case for ratemaking purposes; specifying the contents required for an application to the Public Service Commission for approval of the rate base value of the utility system; specifying duties of the commission regarding applications; specifying the commission's retained authority; providing applicability; requiring the commission to adopt rules; providing an effective date.

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

Section 1. Section 367.0712, Florida Statutes, is created to read:

367.0712 Determination of value.—

(1) When a utility acquires an existing utility system, the utility may establish a rate base value of the acquired utility system by using the fair market value of the utility

CODING: Words stricken are deletions; words underlined are additions.

system instead of the system's original cost.

(2)(a) The fair market value of a utility system to be acquired must be based on appraisals conducted by two licensed appraisers chosen from a list established by the commission.

1. One appraiser shall represent and be paid by the acquiring utility and one appraiser shall represent and be paid by the utility system being acquired.

2. Each appraiser shall determine the fair market value using the Uniform Standards of Professional Appraisal Practice, employing cost, market, and income approaches in assessing the value.

3. For ratemaking purposes, the fair market value is the average of the two appraisals.

4. The original source of funding for the utility system being acquired is not relevant to an evaluation of fair market value.

(b) The acquiring utility and utility system being acquired shall jointly retain a licensed engineer to conduct an assessment of the tangible assets of the utility system and the assessment shall be used by the two appraisers in determining the fair market value of the system.

(c) The acquiring utility may include in the cost of the acquired utility system:

1. Reasonable fees paid to the appraisers, if approved by the commission.

2. Reasonable transaction and closing costs incurred by the acquiring utility.

(d) The rate base value of the acquired utility system, which must be reflected in the acquiring utility's next general rate case for ratemaking purposes, is equal to the lesser of the purchase price negotiated between the parties to the sale or the fair market value, and the fees and costs authorized in paragraph (c).

(3) An application to the commission for approval of the rate base value of the utility system to be acquired must contain the following:

(a) Copies of the appraisals performed by the appraisers pursuant to paragraph(2)(a).

(b) Each deficiency identified by the engineering assessment conducted pursuant to paragraph (2)(b) and a 3-year plan for prudent and necessary infrastructure improvements.

(c) The projected rate impact for the selling utility's customers for the next 5 years.

(d) The average of the appraisals, which shall constitute the fair market value of the system.

(e) The assessment of tangible assets pursuant to (2)(b).

(f) The contract of sale.

(g) The estimated value of fees and transaction and closing costs to be incurred by the acquiring utility.

(h) A tariff, including rates equal to the rates of the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

selling utility.

(4) If the application complies with the requirements of subsection (3), the commission shall issue a final order approving or denying the application within 6 months after the date on which the application was filed. An order approving an application shall determine the rate base value of the acquired utility system for ratemaking purposes in a manner consistent with this section.

(5) Notwithstanding any provision in this section, the commission retains its authority under this chapter to set rates for the acquired utility system in future rate cases and may classify the acquired utility system as a separate entity for ratemaking purposes, consistent with the public interest.

(6) This section applies to acquiring utilities that provide water and wastewater services to more than 10,000 customers and are engaged in a voluntary and mutually agreeable acquisition of a water and wastewater system.

(7) The commission shall adopt rules to implement this section.

Section 2. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

HB 207 by Rep. McClain
ACQUISITION OF WATER AND WASTEWATER

AMENDMENT SUMMARY
February 27, 2020

Amendment 1 by Rep. McClain (Strike-all, #763713)

- Reorganizes and streamlines existing provisions of the bill.
- Clarifies ambiguous language concerning applicability of the bill.
- Specifies the Public Service Commission's discretion to establish rate base consistent with the public interest.
- Requires consideration of potential cost efficiencies when projecting the rate impacts associated with a utility acquisition.
- Extends the Commission's review period to 8 months.
- Clarifies that the bill applies to arms-length acquisitions of both investor-owned utility systems *and* government owned or operated systems.
- Allows an intergovernmental utility authority to acquire a water or wastewater system that was previously acquired through eminent domain if at least 10 years have passed since that system was acquired by eminent domain.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee
Representative McClain offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (g) of subsection (7) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(7)

(g)1. Notwithstanding any other provisions of this section, any separate legal entity created under this section, the membership of which is limited to municipalities and counties of the state, and which may include a special district in addition to a municipality or county or both, may acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, relating to a

governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the members of the entity. Notwithstanding s. 367.171(7), any separate legal entity created under this paragraph is not subject to Public Service Commission jurisdiction. The separate legal entity may not provide utility services within the service area of an existing utility system unless it has received the consent of the utility.

2. For purposes of this paragraph, the term:

a. "Host government" means the governing body of the county, if the largest number of equivalent residential connections currently served by a system of the utility is located in the unincorporated area, or the governing body of a municipality, if the largest number of equivalent residential connections currently served by a system of the utility is located within that municipality's boundaries.

b. "Separate legal entity" means any entity created by interlocal agreement the membership of which is limited to two or more special districts, municipalities, or counties of the state, but which entity is legally separate and apart from any of its member governments.

c. "System" means a water or wastewater facility or group of such facilities owned by one entity or affiliate entities.

d. "Utility" means a water or wastewater utility and includes every person, separate legal entity, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation.

3. A separate legal entity that seeks to acquire any utility shall notify the host government in writing by certified mail about the contemplated acquisition not less than 30 days before any proposed transfer of ownership, use, or possession of any utility assets by such separate legal entity. The potential acquisition notice shall be provided to the legislative head of the governing body of the host government and to its chief administrative officer and shall provide the name and address of a contact person for the separate legal entity and information identified in s. 367.071(4)(a) concerning the contemplated acquisition.

4.a. Within 30 days following receipt of the notice, the host government may adopt a resolution to become a member of the separate legal entity, adopt a resolution to approve the utility acquisition, or adopt a resolution to prohibit the utility acquisition by the separate legal entity if the host government determines that the proposed acquisition is not in the public interest. A resolution adopted by the host government which

prohibits the acquisition may include conditions that would make the proposal acceptable to the host government.

b. If a host government adopts a membership resolution, the separate legal entity shall accept the host government as a member on the same basis as its existing members before any transfer of ownership, use, or possession of the utility or the utility facilities. If a host government adopts a resolution to approve the utility acquisition, the separate legal entity may complete the acquisition. If a host government adopts a prohibition resolution, the separate legal entity may not acquire the utility within that host government's territory without the specific consent of the host government by future resolution. If a host government does not adopt a prohibition resolution or an approval resolution, the separate legal entity may proceed to acquire the utility after the 30-day notice period without further notice.

5. After the acquisition or construction of any utility systems by a separate legal entity created under this paragraph, revenues or any other income may not be transferred or paid to a member of a separate legal entity, or to any other special district, county, or municipality, from user fees or other charges or revenues generated from customers that are not physically located within the jurisdictional or service delivery boundaries of the member, special district, county, or municipality receiving the transfer or payment. Any transfer or

payment to a member, special district, or other local government must be solely from user fees or other charges or revenues generated from customers that are physically located within the jurisdictional or service delivery boundaries of the member, special district, or local government receiving the transfer of payment.

6. This section is an alternative provision otherwise provided by law as authorized in s. 4, Art. VIII of the State Constitution for any transfer of power as a result of an acquisition of a utility by a separate legal entity from a municipality, county, or special district.

7. The entity may finance or refinance the acquisition, construction, expansion, and improvement of such facilities relating to a governmental function or purpose through the issuance of its bonds, notes, or other obligations under this section or as otherwise authorized by law. The entity has all the powers provided by the interlocal agreement under which it is created or which are necessary to finance, own, operate, or manage the public facility, including, without limitation, the power to establish rates, charges, and fees for products or services provided by it, the power to levy special assessments, the power to sell or finance all or a portion of such facility, and the power to contract with a public or private entity to manage and operate such facilities or to provide or receive facilities, services, or products. Except as may be limited by

the interlocal agreement under which the entity is created, all of the privileges, benefits, powers, and terms of s. 125.01, relating to counties, and s. 166.021, relating to municipalities, are fully applicable to the entity. However, neither the entity nor any of its members on behalf of the entity may exercise the power of eminent domain over the facilities or property of any existing water or wastewater plant utility system, nor may the entity acquire title to any water or wastewater plant utility facilities, other facilities, or property which was acquired by the use of eminent domain after the effective date of this act unless 10 or more years have elapsed since the date of the acquisition by eminent domain. Bonds, notes, and other obligations issued by the entity are issued on behalf of the public agencies that are members of the entity.

8. Any entity created under this section may also issue bond anticipation notes in connection with the authorization, issuance, and sale of bonds. The bonds may be issued as serial bonds or as term bonds or both. Any entity may issue capital appreciation bonds or variable rate bonds. Any bonds, notes, or other obligations must be authorized by resolution of the governing body of the entity and bear the date or dates; mature at the time or times, not exceeding 40 years from their respective dates; bear interest at the rate or rates; be payable at the time or times; be in the denomination; be in the form;

carry the registration privileges; be executed in the manner; be payable from the sources and in the medium or payment and at the place; and be subject to the terms of redemption, including redemption prior to maturity, as the resolution may provide. If any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes, or other obligations ceases to be an officer before the delivery of the bonds, notes, or other obligations, the signature or facsimile is valid and sufficient for all purposes as if he or she had remained in office until the delivery. The bonds, notes, or other obligations may be sold at public or private sale for such price as the governing body of the entity shall determine. Pending preparation of the definitive bonds, the entity may issue interim certificates, which shall be exchanged for the definitive bonds. The bonds may be secured by a form of credit enhancement, if any, as the entity deems appropriate. The bonds may be secured by an indenture of trust or trust agreement. In addition, the governing body of the legal entity may delegate, to an officer, official, or agent of the legal entity as the governing body of the legal entity may select, the power to determine the time; manner of sale, public or private; maturities; rate of interest, which may be fixed or may vary at the time and in accordance with a specified formula or method of determination; and other terms and conditions as may be deemed appropriate by the officer, official, or agent so designated by the governing body

of the legal entity. However, the amount and maturity of the bonds, notes, or other obligations and the interest rate of the bonds, notes, or other obligations must be within the limits prescribed by the governing body of the legal entity and its resolution delegating to an officer, official, or agent the power to authorize the issuance and sale of the bonds, notes, or other obligations.

9. Bonds, notes, or other obligations issued under this paragraph may be validated as provided in chapter 75. The complaint in any action to validate the bonds, notes, or other obligations must be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 must be published in Leon County and in each county that is a member of the entity issuing the bonds, notes, or other obligations, or in which a member of the entity is located, and the complaint and order of the circuit court must be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county that is a member of the entity issuing the bonds, notes, or other obligations or in which a member of the entity is located. Section 75.04(2) does not apply to a complaint for validation brought by the legal entity.

10. The accomplishment of the authorized purposes of a legal entity created under this paragraph is in all respects for the benefit of the people of the state, for the increase of

their commerce and prosperity, and for the improvement of their health and living conditions. Since the legal entity will perform essential governmental functions for the public health, safety, and welfare in accomplishing its purposes, the legal entity is not required to pay any taxes or assessments of any kind whatsoever upon any property acquired or used by it for such purposes or upon any revenues at any time received by it, whether the property is within or outside the jurisdiction of members of the entity. The exemption provided in this paragraph applies regardless of whether the separate legal entity enters into agreements with private firms or entities to manage, operate, or improve the utilities owned by the separate legal entity. The bonds, notes, and other obligations of an entity, their transfer, and the income therefrom, including any profits made on the sale thereof, are at all times free from taxation of any kind by the state or by any political subdivision or other agency or instrumentality thereof. The exemption granted in this subparagraph is not applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

Section 2. Section 367.0712, Florida Statutes, is created to read:

367.0712 Alternative process to establish rate base value of acquired system.—

(1)(a) When a utility acquires an existing utility system, including a system described in subsection (2) of s. 367.022, the utility may petition the commission to establish a rate base value for the utility system being acquired that is determined using the valuation process described in this section instead of the system's original cost. If the petition meets the filing requirements of subsection (3), the commission, no later than 8 months after the date the complete petition is filed, shall issue a final order on the petition. The commission may grant the petition, in whole or in part or with modifications in the public interest, or may deny the petition if in the public interest. The commission may not approve a rate base value higher than that requested in the petition.

(b) The rate base value established by the commission under this section shall be used for ratemaking purposes in the acquiring utility's next general rate case. The rate base value may not exceed the lesser of the purchase price negotiated between the parties to the acquisition transaction or the average of the two appraisals conducted under subsection (2), except that it may also include reasonable transaction and closing costs incurred by the acquiring utility and reasonable fees paid to the appraisers.

(2)(a) For purposes of this section, the utility system being acquired must be appraised by two licensed appraisers chosen from a list established by the commission. One appraiser

shall be chosen and paid by the acquiring utility, and one appraiser shall be chosen and paid by the utility system being acquired. Each appraiser shall provide an appraisal of the value of the utility system being acquired consistent with the Uniform Standards of Professional Appraisal Practice.

(b) The acquiring utility and the utility system being acquired shall jointly retain a licensed engineer to conduct an assessment of the tangible assets of the utility system being acquired, and the assessment shall be provided to the two appraisers for use in determining the value of the system.

(3) A petition filed under this section to establish the rate base value for a utility system being acquired must contain the following:

(a) The requested rate base value for the utility system being acquired.

(b) Copies of the appraisals required by this section, including the average of the valuations produced by each appraisal.

(c) A copy of the assessment of tangible assets required by this section.

(d) A 3-year plan to address each deficiency identified by the assessment of tangible assets required by this section. The plan must address impact on quality of service and address any planned improvements to water quality.

(e) The 5-year projected rate impact on the customers of the utility system being acquired, including, but not limited to, the rate impact of the following:

(i) Any cost efficiencies expected to result from the transaction; and

(ii) Use of this section, in lieu of the original cost method, to establish rate base.

(f) The contract of sale.

(g) The estimated value of fees and transaction and closing costs to be incurred by the acquiring utility.

(h) A tariff, including rates equal to the rates of the utility system being acquired.

(4) Notwithstanding any provision in this section, the commission retains its authority under this chapter to set rates for the acquired utility system in future rate cases and may classify the acquired utility system as a separate entity for ratemaking purposes, as it deems to be in the public interest.

(5) This section applies to acquiring utilities that provide water service, wastewater service, or both to more than 10,000 customers and are engaged in an arms-length acquisition of a water system, wastewater system, or both types of systems.

(6) The commission shall adopt rules to implement this section.

Section 3. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:
An act relating to acquisition of water and wastewater systems; amending s. 163.01, F.S.; providing a condition under which certain entities may acquire title to any water or wastewater plant utility facilities, other facilities, or property, that were previously acquired by eminent domain; creating s. 367.0712, F.S.; establishing an alternative method by which the Public Service Commission, upon petition by certain water and wastewater utilities, may establish the rate base value for an acquired utility system; specifying duties of the commission regarding petitions and providing a standard of review; requiring the approved rate base value to be reflected in the acquiring utility's next rate case for ratemaking purposes; establishing a procedure for appraisal of the acquired utility system; specifying the contents required for a petition to the Public Service Commission for approval of the rate base value of the acquired utility system; specifying the commission's retained authority; providing applicability; requiring the commission to adopt rules; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 295 Construction Defects
SPONSOR(S): Civil Justice Subcommittee, Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 1488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	9 Y, 4 N, As CS	Mawn	Luczynski
2) Commerce Committee		Brackett DB	Hamon K.W.H.
3) Judiciary Committee			

SUMMARY ANALYSIS

A "construction defect" is a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property ("property"). A property owner, including a subsequent purchaser or a community association ("claimant"), may bring a civil action alleging a construction defect claim against the person or party responsible for the construction defect ("respondent") in a court of competent jurisdiction. A claimant must bring such an action within four years after project completion or, in the case of a latent defect, within ten years of the later of certain statutorily-specified events.

However, at least 60 days before a claimant may bring a construction defect claim in court, or at least 120 days before bringing such a claim if it involves an association representing more than 20 parcels, the claimant must serve written notice of the claim on the respondent. The respondent then has the right to inspect the allegedly defective property, to serve a copy of the notice of claim on any person the respondent believes is responsible for the alleged defect ("secondary respondent"), and to respond with a written settlement offer or to dispute the claim. A settlement offer may include defect repair, monetary payment, or a combination of repairs and monetary payment. If the respondent disputes the claim, or makes an offer to repair or for monetary payment but does not timely follow through, the claimant may bring the claim in court without further notice.

CS/HB 295:

- Creates real estate disclosure requirements relating to construction defect claims for sellers of real property, real estate agents, and brokers.
- Provides that a claimant must attempt to resolve a construction defect claim under any applicable warranty before filing a notice of claim relating to the defect.
- Increases the specificity of detail a claimant must provide in the notice of claim.
- Requires a claimant to affirm the claimant's personal knowledge of the alleged defect, acknowledge that the claimant is aware of the real estate disclosure obligation and penalties for perjury, and sign the notice of claim under penalty of perjury.
- Requires a special verdict form for all construction defect litigation.
- Provides for notice of a construction defect settlement or judgment to a mortgagee or assignee under specified circumstances.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A "construction defect" is a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property[1] ("property") resulting from:

- Defective material, products, or components used in the construction or remodeling;
- A violation of the Florida Building Code;[2]
- A failure of real property's design to meet the applicable professional standards of care at the time of governmental approval; or
- A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction at the time of construction.[3]

A property owner, including a subsequent purchaser or a community association[4] ("claimant"), may bring a civil action alleging a construction defect claim against the contractor, subcontractor, supplier, or design professional responsible for the construction defect ("respondent") in a court of competent jurisdiction. A claimant must bring such an action within four years after project completion or, if the case of a latent defect,[5] within ten years after the date of the later of:

- Actual possession by the owner;
- The issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.[6]

Notice of Claim

To reduce the need for litigation, Florida law requires a claimant to serve written notice of claim on the respondent at least 60 days before the claimant may bring a construction defect claim in court, or at least 120 days before bringing such a claim if it involves an association representing more than 20 parcels.[7] The notice of claim must describe in reasonable detail the alleged defect's nature and, if known, the damage or loss caused by the defect.[8] The notice of claim must also identify the alleged defect's location with enough detail to allow the respondent to easily locate the defect.[9]

Within 10 days after service of the notice of claim, or within 30 days after service if the claim involves an association representing more than 20 parcels, the respondent may serve a copy of the notice of claim ("notice copy") to each contractor, subcontractor, supplier, or design professional the respondent

---

[1] "Real property" means land that is improved and the improvements on such land, including fixtures, manufactured housing, or mobile homes. S. 558.002(8), F.S.

[2] Any person or party damaged as a result of a Florida Building Code violation has a cause of action against the person or party who committed the violation, but if the person or party obtained the required building permit, any local government or public agency authorized to enforce the Florida Building Code approves the plans, the construction project passes all required inspections, and if there is no personal injury or damage to other property, there is no cause of action unless the person or party knew or should have known that the violation existed. S. 553.84, F.S.

[3] S. 558.002(5), F.S.

[4] S. 558.002(2), F.S. "Association" has the same meaning as in sections 718.103(2) (Condominium association), 719.301(9) (Cooperative association), 720.301(9) (Homeowners' association) and 723.075, F.S. (Mobile home park homeowners' association).

[5] A "latent defect" is a hidden or concealed defect that could not be discovered by reasonable and customary observation or inspection made with ordinary care. Blacks Law Dictionary 611 (6th ed. 1996).

[6] S. 95.11(3)(c), F.S.

[7] Ss. 558.001 and 558.004(1)(a), F.S.

[8] S. 558.004(1)(b), F.S.

[9] *Id.*

reasonably believes is responsible for each defect specified in the notice ("secondary respondent") and must note the specific defect for which he or she believes each secondary respondent is responsible.[10]

Inspection and Testing

Within 30 days after service of the notice of claim, or within 50 days after service if the claim involves an association representing more than 20 parcels, the respondent has a right to perform a reasonable inspection of the property to assess each alleged defect and the extent of any repairs or replacements necessary.[11] The claimant must provide the respondent reasonable access to the property during normal working hours, and the respondent must reasonably coordinate the timing and manner of the inspections with the claimant to minimize the number of inspections.[12] Each secondary respondent is entitled to inspect the property in the same manner as the respondent.[13]

If the respondent determines that destructive testing is necessary to reveal the alleged defect's nature and cause, the respondent must give the claimant written notice describing the destructive testing to be performed, the person chosen to do the testing, the estimated amount of time needed for testing and repairs, and the money offered for repair costs.[14] If the claimant objects to the person chosen to perform the testing, the respondent must provide the claimant with a list of three qualified persons from which the claimant may choose one person to perform the testing.[15] Any destructive testing must be done at a mutually agreeable time, must not make the property uninhabitable, and does not give the party performing the destructive testing or associated repairs construction lien[16] rights unless the claimant personally contracts with such party.[17] Additionally, the claimant has a right to observe the destructive testing.[18] However, if the claimant refuses to agree to and subsequently allow reasonable destructive testing, the claimant loses the right to claim damages which could have been avoided or mitigated had destructive testing been done when requested and a remedy properly executed.[19]

Settlement Offers

Within 15 days after service of a notice copy, or within 30 days of service if the claim involves an association with more than 20 parcels, the secondary respondent must give the respondent a written reply.[20] Such reply must include a report, if any, of the scope of any property inspections conducted by the secondary respondent and the findings and results of such inspections.[21] Additionally, within 45 days of service of the notice of claim, or within 75 days of service if the claim involves an association representing more than 20 parcels, the respondent must give the claimant a written reply.[22] Such replies must include a written:

- Offer to remedy the alleged defect at no cost to the claimant, a detailed description of proposed repairs, and a timetable for repair completion;
- Offer to compromise and settle the claim by monetary payment and a timetable for making payment;
- Offer to compromise and settle the claim by a combination of repairs and monetary payment that includes a detailed description of proposed repairs and a timetable for repair completion and monetary payment;

---

[10] S. 558.004(3), F.S.
[11] S. 558.004(2), F.S.
[12] *Id.*
[13] S. 558.004(3), F.S.
[14] S. 558.004(2)(a) and (b), F.S.
[15] S. 558.004(2)
[16] Under Part I of chapter 713, F.S., a contractor, subcontractor, material supplier, laborer or a professional (such as an architect or landscape artist) may claim a lien on a property on or for which such person performed work or provided materials even where such person does not have a direct contract with the property owner.
[17] S. 558.004(2)(d), (f), and (g), F.S.
[18] S. 558.004(2)(e), F.S.
[19] S. 558.004(2)(g), F.S.
[20] S. 558.004(4), F.S.
[21] *Id.*
[22] S. 558.004(5), F.S.

- Statement that the person disputes the claim and will not remedy the alleged defect or compromise and settle the claim; or
- Statement that a monetary payment will be determined by the person's insurer within 30 days after notification to the insurer.[23]

A claimant who receives a timely settlement offer must accept or reject the offer by serving written notice of such acceptance or rejection on the respondent within 45 days after receiving the offer.[24] However, a claimant may, without further notice, bring an action against the respondent if the respondent disputes the claim and will not remedy the alleged defect or compromise and settle the claim, or does not timely respond to the notice of claim.[25]

If the claimant timely and properly accepts a repair offer, the claimant must give the respondent reasonable access to the property during normal working hours to perform the repairs by the agreed-upon completion date.[26] If the respondent completes the repairs or makes payment within the agreed time and in the agreed manner, the claimant cannot bring an action for the claim described in the notice.[27] However, a claimant may, without further notice, bring an action against the respondent if the claimant timely and properly accepted a repair or payment offer, but the repairs or payment are not made within the agreed time and in the agreed manner.[28]

Special Verdicts

A verdict is the final decision of the jury concerning those matters of fact which were submitted to it by the court for its determination.[29] A general verdict is the jury's final declaration as to the truth of the matter submitted to their determination and which is at issue, while a special verdict is one in which the jury, in a civil case, makes separate findings on the basis of the evidence presented.[30] While special verdicts are required in some jury trials, such as those involving comparative negligence, special verdicts are allowed, but not required, in construction defect claims.[31]

Real Estate Disclosures

Where the seller of a home knows of facts materially affecting the property's value which are not readily observable to and are not known by the buyer, which may include latent construction defects, the seller must disclose such facts to the buyer.[32] A real estate agent and a broker must also disclose such facts when they are known to him or her.[33]

Notice to Mortgagee or Assignee

A mortgage is any conveyance, obligation conditioned or defeasible, bill of sale or other instrument of writing conveying or selling property to secure the payment of money.[34] A mortgage gives the mortgagee or its assignee a specific lien on the property described in the mortgage but does not convey legal title or the right of possession to the property to the mortgagee or assignee.[35]

---

[23] S. 558.004(4) and (5), F.S.
[24] S. 558.004(7), F.S.
[25] S. 558.004(6), F.S.
[26] S. 558.004(8), F.S.
[27] *Id.*
[28] *Id.*
[29] Fla. Jur. 2d Trial § 282.
[30] *Id.*
[31] *See Lawrence v. Florida East Coast Railway Co.*, 346 So. 2d 1012 (Fla. 3d DCA 1958); *see also* ch. 558, F.S.
[32] *Johnson v. Davis*, 480 So. 2d 625 (Fla. 1985).
[33] *Johnson v. Davis*, 480 So. 2d at 625.
[34] S. 697.01(1), F.S.
[35] S. 697.02, F.S.

Some mortgage contracts require the mortgagor to notify the mortgagee if the property is damaged. Additionally, many payments on a property insurance claim are made out to both the mortgagor and the mortgagee, giving the mortgagee notice of property damage even where such notice is not required by contract. However, if a claimant succeeds on a construction defect claim related to a property on which a mortgagee or its assignee has a security interest, Florida law does not require the claimant to notify the mortgagee or assignee of the defect.

Effect of Proposed Changes

Notice of Claim

CS/HB 295 prohibits a claimant from filing a notice of claim unless the claimant has first submitted a claim for the alleged defect under any applicable warranty and the warranty provider has denied the claim or failed to offer a satisfactory remedy. The bill also provides that, in addition to information required under current law, a notice of claim must:

- Describe the nature of the alleged defect and its location in specific detail.
- Include any repair estimates or expert reports the claimant obtained relating to the alleged defect and, if the alleged defect is visible, at least one photograph of such defect.
- Affirm the claimant has personal knowledge of the alleged defect.
- Acknowledge the claimant is aware of real estate disclosure obligations and perjury penalties.
- Be signed by the claimant under penalty of perjury.

Further, the bill requires a respondent to serve a notice copy on any secondary respondent, removing the respondent's discretion over whether to involve the secondary respondents.

Inspection and Testing

The bill expressly provides that a respondent must reasonably coordinate the timing of any property inspections with the claimant and any secondary respondents to minimize the number of inspections. The bill also requires a claimant to give a secondary respondent reasonable access to the property for defect inspections.

Special Verdicts

The bill requires both a jury verdict and a final judgment[36] issued in a construction defect claim to include a detailed description of the nature of the defect and the monetary amount awarded against each party separately as well as the monetary amount of the judgment attributable to:

- Repairing or replacing the party's defective work.
- Repairing or replacing other non-defective property damaged by the defective work.
- Other damages awarded against the party.

Real Estate Disclosures

The bill requires the seller of real property to disclosure to a buyer, in a written disclosure statement set forth in the sale contract or a separate writing:

- Whether the seller, or an association acting on the seller's behalf, made a construction defect claim relating to the real property subject to the sale contract;
- The specific nature of the defect alleged;
- The claim's outcome; and
- Whether the defect was repaired, and if so, a repair description.

[36] A final judgment is the last decision from a court that resolves all issues in dispute and settles the parties' rights with respect to those issues. A final judgment leaves nothing except decisions on how to enforce the judgment, whether to award costs, and whether to file an appeal. Legal Information Institute, *Final Judgment*, https://www.law.cornell.edu/wex/final_judgment (last visited Jan. 31, 2020).

Further, the bill requires a real estate agent or broker to disclose, if known, whether the seller or an association acting on the seller's behalf made a construction defect claim relating to the property subject to the sale contract, the outcome of the claim, and what, if any, repairs were made. These provisions ensure a prospective buyer has notice of any unrepaired construction defects prior to purchasing a property.

Notice to Mortgagee or Assignee

The bill provides that, if a construction defect claim results in a monetary settlement or judgment in the claimant's favor, and a mortgagee or assignee has a security interest in the real property related to the claim, the claimant must, within 90 days of the claim's resolution, send written notice to the mortgagee or assignee of:

- The specific nature of the defect;
- The claim's outcome, including the amount of any monetary settlement reached or judgment awarded; and
- Whether the defect was repaired and a repair description or, if repairs have not begun, the anticipated repair start date.

If defect repairs are completed after the claimant sends such notice, the bill requires the claimant to supplement the notice within 30 days of repair completion. This ensures that the mortgagee or assignee has knowledge of property defects which may decrease the value of property in which it has a security interest.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 475.278, relating to authorized brokerage relationships; presumption of transaction brokerage; required disclosures.
Section 2: Amends s. 558.004, F.S., relating to notice and opportunity to repair.
Section 3: Creates s. 558.0045, F.S., relating to construct defect litigation; special requirements.
Section 4: Creates s. 558.006, F.S., relating to construction defect disclosure statement.
Section 5. Creates s. 558.007, F.S., relating to notice to mortgagee or assignee.
Section 6: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce fraudulent construction defect claims, resulting in savings for home builders and contractors which may then be passed on to consumers. The bill may also reduce litigation costs as legitimate claims are resolved through the warranty process or settled.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to effect counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2020, the Civil Justice Subcommittee adopted a strike-all amendment, as amended, and reported the bill favorably as a committee substitute. The strike-all:

- Restored the authority of a condominium, cooperative, or homeowners' association to bring a construction defect claim.
- Deleted provisions:
  - Requiring mandatory non-binding arbitration of construction defect claims.
  - Conditioning payment after a settlement or judgment on a construction defect claim on the claimant entering into a repair contract.
  - Requiring the claimant to enter into a repair contract within a specified time.
  - Reducing the amount of any settlement or judgment to full contract price.
  - Increasing the response period after service of a copy of the notice of claim.
- Created real estate disclosure requirements relating to construction defect claims for sellers of real property, real estate agents, and brokers.
- Provided that a claimant must attempt to resolve a construction defect claim under any applicable warranty before filing a notice of claim relating to the defect.
- Increased the specificity of detail a claimant must provide in the notice of claim.
- Required a claimant to affirm the claimant's personal knowledge of the alleged defect, acknowledge that the claimant is aware of the real estate disclosure obligation and penalties for perjury, and sign the notice of claim under penalty of perjury.
- Required a special verdict form for all construction defect litigation.
- Provided for notice of a construction defect settlement or judgment to a mortgagee or assignee under specified circumstances.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to construction defects; amending s. 475.278; requiring specified real estate licensees to disclose a construction defect claim relating to residential real property and its outcome under specified circumstances; amending s. 558.004, F.S.; requiring a claimant to submit a construction defect claim to the warranty provider before serving a notice of claim; providing notice requirements; providing that a person who willfully includes a false statement in a notice commits perjury; authorizing a person served with a copy of a notice to perform a reasonable inspection of the property subject to the claim; providing inspection requirements for claimants and persons served with a copy of a notice; requiring, instead of authorizing, a person served with a notice to serve a copy of the notice to specified persons under certain circumstances; making technical changes; creating s. 558.0045; providing jury verdict and final judgment requirements relating to a construction defect claim; creating s. 558.006; requiring a seller of real property to disclose specified information relating to a construction defect to a buyer; creating s. 558.007; requiring a claimant to notify a mortgagee or assignee within a specified timeframe after a

settlement or judgment of a construction defect claim; requiring a claimant to update the notice within a specified timeframe under certain circumstances; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2), paragraphs (a) and (c) of subsection (3), and paragraphs (a) and (c) of subsection (4) of section 475.278, Florida Statutes, are amended to read:

475.278 Authorized brokerage relationships; presumption of transaction brokerage; required disclosures.—

(2) TRANSACTION BROKER RELATIONSHIP.—A transaction broker provides a limited form of representation to a buyer, a seller, or both in a real estate transaction but does not represent either in a fiduciary capacity or as a single agent. The duties of the real estate licensee in this limited form of representation include the following:

(d) Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer, including whether the seller or an association acting on the seller's behalf has made a construction defect claim under chapter 558 relating to the

property, the outcome of the claim, and what, if any, repairs were made;

(3) SINGLE AGENT RELATIONSHIP.—

(a) Single agent; duties.—The duties of a real estate licensee owed to a buyer or seller who engages the real estate licensee as a single agent include the following:

1. Dealing honestly and fairly;

2. Loyalty;

3. Confidentiality;

4. Obedience;

5. Full disclosure;

6. Accounting for all funds;

7. Skill, care, and diligence in the transaction;

8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and

9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable, including whether the seller or an association acting on the seller's behalf has made a construction defect claim under chapter 558 relating to the property, the outcome of the claim, and what, if any, repairs were made.

(c) Contents of disclosure.—

1. Single agent duties disclosure.—The notice required under subparagraph (b)1. must include the following information in the following form:

SINGLE AGENT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

As a single agent, ...(insert name of Real Estate Entity and its Associates)... owe to you the following duties:

1. Dealing honestly and fairly;

2. Loyalty;

3. Confidentiality;

4. Obedience;

5. Full disclosure;

6. Accounting for all funds;

7. Skill, care, and diligence in the transaction;

8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and

9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable, including whether the seller or an association acting on the seller's behalf has made a construction defect claim under chapter 558 relating to the property, the outcome of the claim, and what, if any, repairs were made.

....

Date Signature

2. Transition disclosure.—To gain the principal's written consent to a change in relationship, a licensee must use the following disclosure:

CONSENT TO TRANSITION TO

TRANSACTION BROKER

FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

As a transaction broker, ...(insert name of Real Estate Firm and its Associates)..., provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;

2. Accounting for all funds;

3. Using skill, care, and diligence in the transaction;

4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer, including whether the seller or an association acting on the seller's behalf has made a

construction defect claim under chapter 558 relating to the property, the outcome of the claim, and what, if any, repairs were made;

5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;

6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and

7. Any additional duties that are entered into by this or by separate written agreement.

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

.....I agree that my agent may assume the role and duties of a transaction broker. [must be initialed or signed]

(4) NO BROKERAGE RELATIONSHIP.—

(a) No brokerage relationship; duties.—A real estate licensee owes to a potential seller or buyer with whom the licensee has no brokerage relationship the following duties:

1. Dealing honestly and fairly;

2. Disclosing all known facts that materially affect the value of the residential real property which are not readily observable to the buyer, including whether the seller or an association acting on the seller's behalf has made a construction defect claim under chapter 558 relating to the property, the outcome of the claim, and what, if any, repairs were made; and

3. Accounting for all funds entrusted to the licensee.

(c) Contents of disclosure.—The notice required under paragraph (b) must include the following information in the following form:

NO BROKERAGE RELATIONSHIP NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

As a real estate licensee who has no brokerage relationship with you, ...(insert name of Real Estate Entity and its Associates)... owe to you the following duties:

1. Dealing honestly and fairly;

2. Disclosing all known facts that materially affect the value of residential real property which are not readily observable to the buyer, including whether the seller or an association acting on the seller's behalf has made a construction defect claim under chapter 558 relating to the property, the outcome of the claim, and what, if any, repairs were made.

3. Accounting for all funds entrusted to the licensee.

...(Date)... ...(Signature)...

Section 2. Subsections (1) through (4) and subsection (15) of section 558.004, Florida Statutes, are amended to read:

558.004 Notice and opportunity to repair.—

(1)(a) In actions brought alleging a construction defect, the claimant shall, at least 60 days before filing any action, or at least 120 days before filing an action involving an association representing more than 20 parcels, serve written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable, which notice shall refer to this chapter. If the construction defect claim arises from work performed under a contract, the written notice of claim must be served on the person with whom the claimant contracted. However, a notice of claim may not be served under this chapter unless the claimant has first properly submitted a claim for the alleged construction defect under any applicable warranty, and

the warranty provider has denied the claim or has not offered a remedy satisfactory to the claimant within the time limits provided in the warranty. This chapter provides a notice process for a construction defect claim that has been denied or not otherwise satisfied under any applicable warranty.

(b) The notice of claim must:

1. Describe in specific ~~reasonable~~ detail the nature of each alleged construction defect. ~~and~~

2. Include, if the alleged construction defect or evidence thereof is visible, at least one photograph of the alleged defect or evidence thereof, any repair estimates or expert reports obtained relating to the alleged defect, and a description of~~, if known,~~ the damage or loss resulting from the alleged defect, if known.

3. Based upon at least a visual inspection by the claimant or its agents, ~~the notice of claim must~~ identify the specific location of each alleged construction defect sufficiently to enable the responding parties to locate the alleged defect without undue burden. The claimant has no obligation to perform destructive or other testing for purposes of this notice.

4. Affirm that the claimant has personal knowledge of the alleged construction defect.

5. Acknowledge that the claimant is aware of the real estate disclosure obligation under s. 558.006 and of the penalties for perjury under chapter 837.

6. Be signed by the claimant and include the following statement directly above the claimant's signature line in 18-point uppercase, boldfaced type:

UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

(c) Any person who willfully includes a false statement in the notice of claim required by this section is guilty of perjury and, upon conviction, will be punished accordingly.

(d) ~~(c)~~ The claimant shall endeavor to serve the notice of claim within 15 days after discovery of an alleged defect, but the failure to serve notice of claim within 15 days does not bar the filing of an action, subject to s. 558.003. This subsection does not preclude a claimant from filing an action sooner than 60 days, or 120 days as applicable, after service of written notice as expressly provided in subsection (6), subsection (7), or subsection (8).

(e) ~~(d)~~ A notice of claim served pursuant to this chapter shall not toll any statute of repose period under chapter 95.

(2) Within 30 days after service of the notice of claim, or within 50 days after service of the notice of claim involving an association representing more than 20 parcels, any ~~the~~ person served with the notice of claim under subsection (1), or a copy

thereof under subsection (3), may ~~is entitled to~~ perform a reasonable inspection of the property or of each unit subject to the claim to assess each alleged construction defect. An association's right to access property for either maintenance or repair includes the authority to grant access for the inspection. The claimant must ~~shall~~ provide the person served with notice under subsection (1), or a copy thereof under subsection (3), and such person's contractors or agents reasonable access to the property during normal working hours to inspect the property to determine the nature and cause of each alleged construction defect and the nature and extent of any repairs or replacements necessary to remedy each defect. The person served with notice under subsection (1), or a copy thereof under subsection (3), must ~~shall~~ reasonably coordinate the timing and manner of any and all inspections with the claimant to minimize the number of inspections. The inspection may include destructive testing by mutual agreement under the following reasonable terms and conditions:

(a) If the person served with notice under subsection (1) determines that destructive testing is necessary to determine the nature and cause of the alleged defects, such person must ~~shall~~ notify the claimant in writing.

(b) The notice must ~~shall~~ describe the destructive testing to be performed, the person selected to do the testing, the estimated anticipated damage and repairs to or restoration of

the property resulting from the testing, the estimated amount of time necessary for the testing and to complete the repairs or restoration, and the financial responsibility offered for covering the costs of repairs or restoration.

(c) If the claimant promptly objects to the person selected to perform the destructive testing, the person served with notice under subsection (1) must ~~shall~~ provide the claimant with a list of three qualified persons from which the claimant may select one such person to perform the testing. The person selected to perform the testing must ~~shall~~ operate as an agent or subcontractor of the person served with notice under subsection (1) and must ~~shall~~ communicate with, submit any reports to, and be solely responsible to the person served with notice.

(d) The testing must ~~shall~~ be done at a mutually agreeable time.

(e) The claimant or a representative of the claimant may be present to observe the destructive testing.

(f) The destructive testing may ~~shall~~ not render the property uninhabitable.

(g) There are ~~shall be~~ no construction lien rights under part I of chapter 713 for the destructive testing caused by a person served with notice under subsection (1) or for restoring the area destructively tested to the condition existing before

~~prior to~~ testing, except to the extent the owner contracts for the destructive testing or restoration.

If the claimant refuses to agree and thereafter permit reasonable destructive testing, the claimant has ~~shall have~~ no claim for damages which could have been avoided or mitigated had destructive testing been allowed when requested and had a feasible remedy been promptly implemented.

(3) Within 10 days after service of the notice of claim, or within 30 days after service of the notice of claim involving an association representing more than 20 parcels, the person served with notice under subsection (1) must ~~may~~ serve a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional whom it reasonably believes is responsible for each defect specified in the notice of claim and shall note the specific defect for which it believes the particular contractor, subcontractor, supplier, or design professional is responsible. The notice described in this subsection may not be construed as an admission of any kind. Each such contractor, subcontractor, supplier, and design professional may inspect the property as provided in subsection (2).

(4) Within 15 days after service of a copy of the notice of claim under ~~pursuant to~~ subsection (3), or within 30 days after service of the copy of the notice of claim involving an

association representing more than 20 parcels, the contractor, subcontractor, supplier, or design professional must serve a written response to the person who served a copy of the notice of claim. The written response must include a report, if any, of the scope of any inspection of the property and the findings and results of the inspection. The written response must include one or more of the offers or statements specified in paragraphs (5)(a)-(e), as chosen by the responding contractor, subcontractor, supplier, or design professional, with all of the information required for that offer or statement.

(15) Upon request, the claimant and any person served with notice under ~~pursuant to~~ subsection (1) shall exchange, within 30 days after service of a written request, which request must cite this subsection and include an offer to pay the reasonable costs of reproduction, any design plans, specifications, and as-built plans; videos and additional photographs ~~and videos~~ of the alleged construction defect identified in the notice of claim; expert reports not already provided that describe any defect upon which the claim is made; subcontracts; purchase orders for the work that is claimed defective or any part of such materials; and maintenance records and other documents related to the discovery, investigation, causation, and extent of the alleged defect identified in the notice of claim and any resulting damages. A party may assert any claim of privilege recognized under the laws of this state with respect to any of

the disclosure obligations specified in this chapter. In the event of subsequent litigation, any party who failed to provide the requested materials is ~~shall be~~ subject to such sanctions as the court may impose for a discovery violation. Expert reports exchanged between the parties may not be used in any subsequent litigation for any purpose, unless the expert, or a person affiliated with the expert, testifies as a witness or the report is used or relied upon by an expert who testifies on behalf of the party for whom the report was prepared.

Section 3. Section 558.0045, Florida Statutes, is created to read:

558.0045 Construction defect litigation; special requirements.—

(1) This section applies to all actions involving construction defects, including civil suits and arbitrations.

(2) If a claimant proceeds to trial in an action, the jury verdict and final judgment must include a detailed description of the nature of the defect and the monetary amount awarded against each liable party separately, including the monetary amount of the award attributable to:

(a) Repairing or replacing the defective work.

(b) Repairing or replacing nondefective property damaged by the defective work.

(c) Other recoverable damages authorized by law that are awarded against the liable party.

Section 4. Section 558.006, Florida Statutes, is created to read:

558.006 Construction defect disclosure statement.—The seller of real property must disclose to the buyer, before closing, in a written disclosure statement set forth in the sale contract or a separate writing:

(1) Whether the seller or an association acting on the seller's behalf has made a claim under this chapter alleging a construction defect relating to the real property subject to the sale contract.

(2) The specific nature of the alleged defect.

(3) The outcome of the claim. This subsection does not require the seller to disclose the amount of any monetary settlement reached or judgment awarded.

(4) Whether the defect has been repaired and a description of any repairs made.

Section 5. Section 558.007, Florida Statutes, is created to read:

558.007 Notice to mortgagee or assignee.—

(1) If a notice of claim alleging a construction defect under this chapter results in a monetary settlement or judgment in favor of the claimant, and a mortgagee or assignee has a security interest in the real property subject to the claim, the claimant must, within 90 days after the resolution of the claim, notify the mortgagee or assignee, in writing, of:

(a) The specific nature of the defect.

(b) The outcome of the claim, including the amount of any monetary settlement reached or judgment awarded.

(c) Whether the defect has been repaired and a description of any repairs made, or, if repairs have not yet begun, the anticipated date that the repairs will begin.

(2) If repairs relating to the defect are completed after the claimant notifies the mortgagee or assignee as required under subsection (1), the claimant must update the notice within 30 days after completion of the repairs.

Section 6. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

HB 295 by Rep. Santiago
Construction Defects

AMENDMENT SUMMARY
February 27, 2020

Amendment 1 by Rep. Santiago (Strike-all amendment):
The strike-all amendment:

- Provides that a person has a cause of action for a violation of the building code if the violation is a "material" violation, instead of current law, which provides that a person has a cause of action for any violation of the building code.
- Defines "material violation" as a violation, which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building.
- Provides that a person must attempt to resolve a claim for construction defect or a claim for a violation of the building code through applicable warranties before filing a notice of claim of construction defect or a cause of action.

The strike-all amendment removes the following from the bill:

- Real estate disclosure requirements relating to construction defect claims for sellers of real property, real estate agents, and brokers.
- Information required to be in the notice of claim of construction defect.
- Requirement that a claimant affirm personal knowledge of the alleged defect, and make certain disclosures under penalty of perjury.
- Provisions relating to the use of a special verdict form for all construction defect litigation.
- Provisions requiring that a claimant provide notice of a construction defect settlement or judgment to a mortgagee or assignee under specified circumstances.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative Santiago offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 553.84, Florida Statutes, is amended to read:

553.84 Statutory civil action.—

(1) For purposes of this section, the term "material violation" means a violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.

(2) Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a material

violation of this part or the Florida Building Code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation; however, if the person or party obtains the required building permits and any local government or public agency with authority to enforce the Florida Building Code approves the plans, if the construction project passes all required inspections under the code, and if there is no personal injury or damage to property other than the property that is the subject of the permits, plans, and inspections, this section does not apply unless the person or party knew or should have known that the violation existed.

(3) A notice of claim or civil action may not be served under this section unless the claimant has first properly submitted a claim for the alleged construction defect under any applicable warranty, and the warranty provider has denied the claim or has not offered a remedy satisfactory to the claimant within the time limits provided in the warranty.

Section 2. Paragraphs (b), (c), and (d) of subsection (1) of section 558.004 are relettered as paragraphs (c), (d), and (e), and a new paragraph (b) is added to that paragraph, to read:

558.004 Notice and opportunity to repair.—

(1)(a) In actions brought alleging a construction defect, the claimant shall, at least 60 days before filing any action, or at least 120 days before filing an action involving an

association representing more than 20 parcels, serve written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable, which notice shall refer to this chapter. If the construction defect claim arises from work performed under a contract, the written notice of claim must be served on the person with whom the claimant contracted.

(b) A notice of claim may not be served under this chapter unless the claimant has first properly submitted a claim for the alleged construction defect under any applicable warranty, and the warranty provider has denied the claim or has not offered a remedy satisfactory to the claimant within the time limits provided in the warranty.

Section 3. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert: An act relating to construction defects; amending s. 553.84, F.S.; defining the term "material violation"; revising when a person has a cause of action for a violation relating to the Florida Building Code; providing requirements for such cause of action; amending s. 558.004, F.S.; requiring a claimant to submit a construction defect claim to the warranty provider before serving a notice of claim; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 537 Home-Based Businesses
SPONSOR(S): Business & Professions Subcommittee, Donalds and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 778

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	7 Y, 3 N, As CS	Wright	Anstead
2) State Affairs Committee	13 Y, 7 N	Moehrle	Williamson
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority, and county and municipal governments may exercise those powers of self-government that are provided by general or special law. As such, general law and home rule authority determines whether local governments are able to regulate businesses, and to what degree. Currently, some local governments have ordinances specific to regulating home-based businesses, or businesses which operate out of a residence. Some local governments regulate the types of businesses that may be carried on at a residence and others regulate the space in which business may occur.

The bill provides that local governments may not enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in a manner that is different from other businesses in a local government's jurisdiction.

In order to be considered a home-based business, the bill requires that:

- the business operates, in whole or in part, from a residential property;
- the employees of the home-based business reside in the residence, except for up to two employees that do not reside at the residence. However, employees of the home-based business that do not primarily work at the residential dwelling are not required to reside in the dwelling;
- parking for the business activities of the home-based business complies with local zoning requirements;
- the use of the residential property is consistent with the uses of the residential areas that surround the property, but incidental and short term business uses and activities are permitted; and
- the activities of the home-based business are secondary to the property's use as a residential dwelling.

The bill provides that home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on the state.

The bill has an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants authority for broad home rule by local governments. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[2]

Likewise, municipalities[3] have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[4]

Local Business Tax

The local business tax authorized in ch. 205, F.S., represents the fees charged and the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.[5] Counties and municipalities may levy a business tax.[6]

Revenue Sources Based on Home Rule Authority

Pursuant to home rule authority, local governments may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. A regulatory fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.[7]

Businesses and Occupations

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.[8] If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.[9] For example, Florida law currently preempts local regulation with regard to the following:

- assessing local fees associated with providing proof of licensure as a contractor, or providing, recording, or filing evidence of workers' compensation insurance coverage by a contractor; [10]
- assessing local fees and rules regarding low-voltage alarm system projects;[11]
- tobacco and nicotine products;[12]

---

[1] Art. VIII, s. 1(f), Fla. Const.
[2] Art. VIII, s. 1(g), Fla. Const.
[3] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."
[4] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.
[5] S. 205.022(5), F.S.
[6] Ss. 205.033 and 205.043, F.S.
[7] EDR, *supra* note 12, at 9.
[8] Art. VIII, s. 1(f), Fla. Const.; Art. VII, s. 9(a), Fla. Const.; Art. VIII, s. 2(b), Fla. Const.; s. 166.021(1), F.S.
[9] *Id.*; Wolf and Bolinger, *supra* note 17.
[10] S. 553.80(7)(a)5.c., F.S.
[11] S. 489.503(14), F.S.
[12] Ch. 569, F.S., and s. 386.209, F.S.

- firearms, weapons, and ammunition;[13]
- employment benefits;[14]
- polystyrene products;[15]
- public lodging establishments and public food service establishments;[16] and
- disposable plastic bags.[17]

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.[18] For example, Florida law specifically authorizes regulations relating to:

- zoning and land use;[19]
- the levy of "reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter";[20]
- the levy of local business taxes;[21]
- building code inspection fees;[22]
- tattoo establishments;[23]
- massage practices;[24]
- child care facilities;[25]
- taxis and other vehicles for hire;[26] and
- waste and sewage collection.[27]

Home-based Business Regulations

Currently, some local governments have ordinances specific to regulating home-based businesses, or businesses which operate out of a residence. Some local governments regulate the types of businesses that may be carried on at a residence and others regulate the space in which business may occur. Examples include:

- In Volusia County, home-based businesses are required to occupy no more than 25 percent of the habitable floor area of the residence,[28]
- In Tampa, home-based businesses may not be conducted in any accessory building;[29]
- In Naples, home-based businesses are not allowed to conduct retail, wholesale, or warehousing activities at the residence;[30] and
- In Gainesville, a home-based business may not have more than one automobile used for the home-based business parked on the premises within view of surrounding properties. Such automobile may not have more than two signs, not exceeding two square feet in area, each mounted flat against or painted along the sides.[31]

---

[13] S. 790.33(1), F.S.
[14] S. 218.077, F.S.
[15] S. 500.90, F.S.
[16] S. 509.032, F.S.
[17] S. 403.7033, F.S.
[18] *Supra* note 16.
[19] S. 125.01(1)(h), F.S.
[20] S. 166.221, F.S.
[21] Ch. 205, F.S.
[22] S. 166.222, F.S.
[23] S. 381.00791, F.S.
[24] S. 480.052, F.S.
[25] S. 402.306, F.S.
[26] S. 125.01(1)(n), F.S.
[27] S. 125.01(1)(k), F.S.
[28] Volusia County, FL., Ch. 72, art. II, div. 8, s. 72-283.
[29] Tampa, FL., Ch. 27, art. VI, div. 2, s. 27-282.5.
[30] Naples, FL., Ch. 56, art. III, s. 56-92.
[31] Gainesville, FL., Ch. 30, art. V, div. 2, s. 30-5.37.

Effect of the Bill

The bill provides that local governments may not:

- prohibit, restrict, regulate, or license home-based businesses in a manner that is different from other businesses in a local government's jurisdiction; or
- enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in violation of the provisions in the bill.

In order to be considered a home-based business, the bill requires that:

- the business operates, in whole or in part, from a residential property;
- the employees of the home-based business reside in the residence, except that up to two employees that do not reside at the residence may work at the residence. However, other employees of the home-based business that do not primarily work at the residence are not required to reside in the residence;
- parking related to the business activities of the home-based business complies with local zoning requirements;
- as viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property. However, incidental and short term business uses may be conducted at the residence; and
- the activities of the home-based business are secondary to the property's use as a residential dwelling.

The bill allows a home-based business that operates from a residential property to operate in an area zoned for residential use.

Home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1 Creates s. 559.955, F.S., relating to requirements for home-based businesses.

Section 2 Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The bill provides that home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

2. Expenditures:

Indeterminate. The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more home-based businesses to operate more freely and efficiently.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill prohibits local governments, except the county and municipality where the home-based business is located, from collecting business taxes from home-based businesses. However, an exemption may apply given that laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither requires nor provides authority for agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill allows a "party" to bring a claim against a local government for certain actions against home-based businesses. It would be more precise to replace "party" with "home-based business," or "substantially affected person."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Business & Professions Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed the following provisions from the bill:

- The total state preemption on the regulation and licensing of home-based businesses;
- Requirements relating to the Florida Building Code, traffic, noise, waste, and recycling; and
- Legislative findings.

The PCS added the following provisions to the bill:

- Authority to bring a legal challenge against any local government action related to home-based businesses, including attorney fees and costs for the prevailing party;
- A prohibition on local governments from regulating home-based businesses differently than other businesses;

- Clarification that home-based businesses are only subject to applicable business taxes where the home-based business is located; and
- Clarification that home-based businesses may have employees, which do not primarily work or reside at the residence.

This analysis is drafted to the committee substitute as approved by the Business & Professions Subcommittee.

A bill to be entitled

An act relating to home-based businesses; creating s. 559.955, F.S.; specifying conditions under which a business is considered a home-based business; authorizing a home-based business to operate in a residential zone under certain circumstances; prohibiting a local government from certain actions relating to the licensure and regulation of home-based businesses; providing an effective date.

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

Section 1. Section 559.955, Florida Statutes, is created to read:

559.955 Home-based businesses; local government restrictions.-

(1) For purposes of this section, a business is considered a home-based business if it operates, in whole or in part, from a residential property and meets the following criteria:

(a) The employees of the home-based business who work at the residential dwelling also reside in the residential dwelling, except that up to two employees who do not reside at the residential dwelling may work at the residential dwelling. However, other employees of the home-based business who do not primarily work at the residential dwelling are not required to

CODING: Words stricken are deletions; words underlined are additions.

reside in the dwelling.

(b) Parking related to the business activities of the home-based business complies with local zoning requirements.

(c) As viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property. However, incidental and short-term business uses and activities may be conducted at the residential property.

(d) The activities of the home-based business are secondary to the property's use as a residential dwelling.

(2) A home-based business that operates from a residential property as provided in subsection (1):

(a) May operate in an area zoned for residential use.

(b) May not be prohibited, restricted, regulated, or licensed in a manner that is different from other businesses in a local government's jurisdiction.

(c) Shall only be subject to applicable business taxes under chapter 205 in the county and municipality in which the home-based business is located.

(3) Local governments may not enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in violation of this section.

(4) A party may challenge any local government action in violation of this section. The prevailing party in a challenge

is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

Section 2. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

HB 537 by Rep. Donalds
Home-based Businesses

AMENDMENT SUMMARY
February 27, 2020

Amendment 1 by Rep. Donalds (Line 49):

The amendment clarifies that any adversely affected current or prospective home-based business owner may bring a challenge to a local government action which improperly restricts home-based businesses.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Donalds offered the following:

Amendment

Remove line 49 and insert:

(4) Any adversely affected current or prospective home-based business owner may challenge any local government action in

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 623 Community Associations
SPONSOR(S): Civil Justice Subcommittee, Business & Professions Subcommittee, Shoaf
TIED BILLS: **IDEN./SIM. BILLS:** SB 1154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice Subcommittee	14 Y, 0 N, As CS	Mawn	Luczynski
3) Commerce Committee		Brackett DB	Hamon K.W.H.

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes, within the Department of Business and Professional Regulation, broadly regulates condominium and cooperative associations and has limited regulatory authority over homeowner's associations (HOA).

The bill:

- Exempts a pool within an HOA with 32 parcels or less from public pool regulation.
- Requires associations to maintain bids for work or materials for one year, instead of seven.
- Requires an HOA to maintain ballots and all records relating to elections in the HOA's official records.
- Prohibits associations from requiring owners to state a reason for requesting to inspect official records.
- Provides that a condominium association required to make association documents available on a website may instead make them available on a mobile application.
- Allows an HOA to give notice of a meeting on a website.
- Provides that condominium board term limits do not apply retroactively to service prior to 2018.
- Prohibits condominium owners' insurance policies from providing rights of subrogation against the association under certain circumstances.
- Allows condominiums to charge a buyer or renter the actual cost of a background check.
- Provides that certain notice requirements apply to all unit owner meetings, not just the annual meetings.
- Amends the due date for paying a fine levied by an association.
- Provides that an interest in a cooperative unit is an interest in real property, not in personal property.
- Deletes the provision prohibiting a condominium association from contracting with a company in which a board member has a financial interest.
- Allows the office of the Condominium Ombudsman to be located outside of Leon County.
- Permits a unit owner in a condominium to install, at the owner's expense, a natural gas fuel station within the boundaries of the owner's limited common element or exclusive parking area.
- Allows mediation of specified condominium disputes in lieu of non-binding arbitration, except for election and recall disputes, which must be arbitrated or litigated in court.
- Restates that any provision in a community association's declaration, bylaws, or rules that violates any right under the 14th Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution is unenforceable, and no action is required by an association to remove or amend such provisions.
- Provides that a community association may record a notice in the county in which it is located indicating that it does not intend to enforce any regulation in its declaration, bylaws, or rules that infringes upon the 14th Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution.

The bill is not expected to have a fiscal impact on local government. The bill may have a fiscal impact on state government. *See* Fiscal Comments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

Condominiums

A condominium is a form of real property ownership created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for common elements operation and maintenance. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The board enacts bylaws which govern the administration of the association.

Cooperatives

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[3] The lease payment amount is the pro-rata share of the cooperative's operational expenses. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical to those regulating condominiums.

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[4] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in ch. 720, F.S., and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes, but no state agency has direct oversight of HOAs.

---

[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 719.103(2)(26), F.S.
[4] S. 720.301(9), F.S.

Cooperatives as Personal and Real Property Interest

Current Situation

The building and land of a cooperative association are owned by a corporation, not the individual unit owners. A person who purchases a cooperative unit does not receive title to the unit or any portion of the cooperative's building or land. Instead, the purchaser receives shares of the cooperative association and leases a unit from the association. An interest in a corporation or cooperative is represented by the ownership of stock in the corporation.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.[5] Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.[6]

Real property is anything that is permanent, fixed, and immovable, such as land or a building. At common law, a leasehold, even for as long as 99 years, was not considered an interest in real property. However, a long-term leasehold interest is taxed in the same manner as a fee interest, so courts generally regard long-term leaseholds to be an interest in real property for taxation purposes.[7]

In Florida, a cooperative is treated as real property for some homestead purposes. Even though the legal definition of homestead follows the common law and requires an interest in real property to qualify for the homestead exemption, the Florida Constitution specifically extends the exemption to a cooperative unit.[8] Florida's homestead laws govern the cooperative for purposes of exemption from forced sale by creditors[9] and for purposes of the ad valorem taxation exemption. However, a cooperative is not subject to Florida's homestead protections and is not considered real property for purposes of devise and descent. Devise and descent is the transfer or conveyance of property by will or inheritance.[10]

In contrast, the Condominium Act specifically provides that "[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold." Thus, an ownership interest in a condominium is expressly converted by statute into an interest in real property. There is no corresponding statute in the Cooperative Act.[11] Florida courts have recognized that there is some confusion in this area and that there is a need for clarification on whether a cooperative ownership interest is an interest in real property or personal property.[12]

Effect of the Bill

The bill provides that an interest in a cooperative unit is an interest in real property for all purposes including devise and descent.

---

[5] *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996).
[6] Am. Jur. 2d Property § 18.
[7] *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); *See generally* The Florida Bar, *Practice Under Florida Probate Code* Chapter 19 (9th ed. 2017).
[8] Art. VII, s. 6(a), Fla. Const. ("The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.").
[9] Ss. 222.01and 222.05, F.S.
[10] *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); *In re Estate of Wartels*, 357 So.2d 708 (Fla. 1978); Black's Law Dictionary (11th ed. 2019).
[11] S. 718.106(1), F.S; *See generally* ch. 719, F.S.
[12] *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008).

Official Records

Current Situation

Condominiums, cooperatives, and HOAs are required to maintain official records for at least seven years. The official records must include:

- A copy of the articles of incorporation, declaration, bylaws, and rules of the association;
- Meeting minutes;
- A roster of all owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- The association's accounting records;
- All contracts for work to be performed, including bids for work, materials, and equipment. Cooperatives and HOAs are only required to maintain bids for one year;
- A copy of the plans, permits, warranties, and other items provided by the developer; and
- All other written records which are related to the association's operation.[13]

The official records for condominiums and cooperatives, but not HOAs, must also include all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.[14]

Owners may request to inspect an association's official records, and the association must make the records available for inspection within ten business days of receiving an inspection request.[15] A condominium and cooperative may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An HOA may also adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections, but an HOA may not require an owner to state the reason for the inspection.[16]

Effect of the Bill

The bill:

- Provides that all records relating to an HOA are official records;
- Mirrors condominium law to cooperative and HOA law by requiring that condominiums maintain bids for work, materials, and equipment for one year instead of seven years;
- Mirrors condominium and cooperative law to HOA law by prohibiting a condominium or cooperative from requiring a unit owner to state a reason for official records inspection; and
- Mirrors HOA law to condominium and cooperative law by including all ballots, sign-in sheets, voting proxies, and all other papers relating to voting in the HOA's official records.

Condominium Unit Owner Insurance and Subrogation

Current Situation

A condominium association must use its best efforts to maintain insurance for the association, the association property, and the common elements. If a condominium maintains insurance for the association, it must have coverage for the condominium property as originally installed and all alterations or additions made to the condominium property.[17]

---

[13] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.
[14] *Id.*
[15] *Id.*
[16] S. 720.303(5), F.S.
[17] S. 718.111, F.S.

Condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, walls, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments. Insurance coverage for such property is the responsibility of the unit owner.[18]

Subrogation is "the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor."[19] In the condominium setting, subrogation allows a unit owner's insurer to stand in the place of the unit owner whose unit has been damaged by a negligent party. The unit owner's insurer pays the unit owner for the damage and stands in the place of the unit owner to seek relief from the party that caused the damage, which may be the condominium association.

Often, a condominium association's declaration may contain a clause requiring a unit owner's insurance policy to prohibit subrogation against the condominium association.[20]

Prior to 2010, Florida law prohibited a condominium unit owner's insurance policy from providing rights of subrogation against the association. That statutory prohibition was repealed in 2010, and subrogation against a condominium association has been permitted since that time.[21]

Effect of the Bill

The bill provides that if a condominium association's insurance policy does not provide rights of subrogation against the unit owners, then a unit owner's insurance policy may not provide rights of subrogation against the association.

Condominium Websites

Current Situation

Condominium associations with 150 or more units that do not manage timeshare units must post certain documents to a website accessible only to unit owners and condominium association employees. The condominium association's website must include:

- The recorded declaration of condominium of each condominium operated by the condominium association and each amendment to each declaration;
- The recorded condominium association bylaws and each amendment to the bylaws;
- The condominium association's articles of incorporation, or other documents creating the condominium association, and each amendment thereto. The copy posted must be a copy of the articles of incorporation filed with the Department of State;
- The condominium association rules;
- Any management agreement, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility;
- Summaries or complete copies of bids for materials, equipment, or services, which must be maintained on the website for one year;
- The annual budget and any proposed budget to be considered at the annual meeting;
- The financial report and any proposed financial report to be considered at a meeting;
- Each director's certification;
- All contracts or transactions between the condominium association and any director, corporation, firm, or condominium association that is not an affiliated condominium association

[18] *Id.*
[19] *Aurora Loan Services LLC v. Senchuk*, 36 So. 3d 716, 717 (Fla. 1st DCA 2010).
[20] Gary L. Wickert & Kelsey Burazin, *Subrogating Condominium Damage*, Claims Journal June 4, 2015, https://www.claimsjournal.com/news/national/2015/06/04/263728.htm (last visited Jan. 23, 2020).
[21] S. 718.111(11), F.S. (2009); *See also* Senate Analysis of 2010 Senate Bill 1196 & 1222 (April 9, 2010).

or any other entity in which a condominium association director is also a director or officer and financially interested;
- Any contract or document regarding the conflict of interest or possible conflict of interest of a community association manager or a board member;
- The notice of any unit owner meeting and the meeting's agenda, posted at least 14 days before the meeting. The notice must be posted in plain view on the front page of the website or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked on the front page; and
- Any documents to be considered during a meeting or listed on the meeting's agenda, which must be posted at least seven days before the meeting where the document will be considered.[22]

Effect of the Bill

The bill allows a condominium association to post the required documents on a mobile application downloadable to a mobile device or to a website.

Condominium Term Limits

Current Situation

Condominium association board members serve one-year terms, but a board member may serve a two-year term if allowed by the association's bylaws or articles of incorporation.[23]

In 2017, the Legislature passed a law prohibiting a condominium association board member from serving more than four consecutive two-year terms unless two-thirds of the total voting interests approve his or her continued service or there are not enough eligible candidates to fill board vacancies.[24]

In 2018, the Legislature amended the term limit provision for condominium board members to clarify that a board member could not serve more than eight consecutive years instead of four consecutive two-year terms.[25] Questions from the public remain about whether time served on a board prior to the enactment of the term limit provision counts toward the eight-year maximum.[26]

Effect of the Bill

The bill provides that only board service occurring after July 1, 2018, counts towards a board member's eight-year maximum.

Condominium Transfer Costs

Current Situation

A condominium association may not charge a potential buyer or renter costs or fees in connection with the sale, lease, sublease, or other transfer of a unit unless:
- The fee is limited to $100 or less;
- The fee is provided for in the association's governing documents; and

[22] S. 718.111(12)(g), F.S.
[23] S. 718.112(2)(d), F.S.
[24] *See* House Analysis of 2017 House Bill 1237 (July 5, 2017).
[25] *See* House Analysis of 2018 House Bill 841 (Mar. 27, 2018).
[26] David G. Muller, *Is new term limit restriction retroactive*, Naples Daily News (Sept. 15, 2018) https://www.naplesnews.com/story/money/real-estate/2018/09/15/new-term-limit-restriction-retroactive/1259991002/ (last visited Jan. 23, 2020).

- The association approves the sale, lease, sublease, or transfer.[27]

A condominium association may require a potential renter to provide the association a security deposit equivalent to one month of rent. The association must place the security deposit in an escrow account maintained by the association.[28]

Effect of the Bill

The bill provides that, in addition to a $100 administrative fee, a condominium association may charge a potential buyer or renter the actual cost to perform any background check or screening required in connection with the sale, mortgage, lease, sublease, or other transfer of a unit.

Condominium Service Providers Conflicts of Interest

Current Situation

Prior to 2017, a condominium association could sign a contract for maintenance or management services with an entity in which a member of the association's board of directors had a financial interest. The contract had to disclose the board member's financial interest, and a discussion of the financial interest had to be in the minutes of the meeting at which the vote to authorize the contract was held. Any contract that failed to disclose such interest was unenforceable.[29] The contract also had to be affirmed by a two-thirds vote of the members of the board of directors present. The board member with a financial interest in the entity could not participate in the vote.[30]

In 2017, the Legislature passed a law prohibiting a condominium association from employing or contracting with any service provider in which a board member, or a relative of a board member within the third degree of consanguinity by blood or marriage, has a financial interest. This restriction does not apply if the board member or relative owns less than one percent of the equity shares of the service provider or to timeshare condominiums.[31]

Effect of the Bill

The bill repeals the provision prohibiting a condominium association from employing or contracting with any service provider in which a board member or a relative of a board member has a financial relationship. However, the bill maintains the provision requiring a board member's financial interest be disclosed in the contract with the association and in the minutes of the meeting at which the board votes on the contract. Any contract that fails to disclose such interest is unenforceable. The contract also requires an affirmative vote of two-thirds of the board of directors present and prohibits a board member with a financial interest from participating in the vote. This restores the law applicable to board member conflicts of interest to its pre-2017 state.

Condominium Electric Vehicle Charging and Natural Gas Fuel Stations

Condominium Electric Vehicle Charging Stations – Current Situation

In 2018, the Legislature passed a law prohibiting a condominium association from preventing a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The electricity charges for the station must be separately metered by the unit owner.[32]

---

27 S. 718.112(2)(i), F.S.
28 *Id.*
29 S. 718.3026(3), F.S.
30 *Id.*
31 *See* House Analysis, *supra* note 24.
32 *See* House Analysis, *supra* note 25.

The installation may not cause irreparable damage to the condominium property, and the association may require the unit owner to:[33]

- Comply with bona fide safety requirements, consistent with applicable building code or recognized safety standards;
- Comply with reasonable architectural standards adopted by the association so long as such standards do not prohibit the installation of such station or substantially increase the cost;
- Engage the services of a duly licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station;
- Provide a certificate of insurance naming the association as an additional insured on the owner's insurance policy; and
- Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station.

The costs of installation, operation, maintenance, repair, and removal are the responsibility of the unit owner or the owner's successor and the association may use their assessment powers to enforce the payment of such costs.[34]

The association must grant an implied easement across the common elements to the unit owner for the installation of the electric vehicle charging station and any necessary equipment for the furnishing of electrical power to the electric vehicle charging station.[35]

Natural Gas Fuel – Current Situation

Natural gas fuel is any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle.[36] The term includes all forms of fuel commonly or commercial known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.[37] However, the term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.[38]

Condominium Electric Vehicle Charging and Natural Gas Fuel Stations – Effect of the Bill

The bill provides that a condominium is prohibited from preventing a unit owner from installing a natural gas fuel station or electric vehicle charging station within the boundaries of the unit owner's limited common element or exclusively designated parking area.

The bill gives "natural gas fuel" the same meaning as s. 206.9951, F.S., and defines natural gas fuel vehicle to mean a motor vehicle powered by natural gas fuel.

A unit owner installing a natural gas fuel station is subject to the same requirements as an owner installing an electric vehicle charging station. The unit owner is also responsible for the supply and storage of the natural gas fuel.

The bill allows a unit owner to use an embedded meter to meter the electricity used by an electric vehicle charging or natural gas fuel station or to have the station separately metered.

The bill also provides that the unit owner is responsible for complying with all federal, state, or local laws or regulations applicable to the installation, maintenance, or removal of electric vehicle charging or natural gas fuel stations.

---

[33] S. 718.113(8), F.S.
[34] *Id.*
[35] *Id.*
[36] S. 206.9951(2), F.S.
[37] *Id.*
[38] *Id.*

Alternative Dispute Resolution

Current Situation

Condominiums and Cooperatives

The Condominium and Cooperative Acts provide for an arbitration program within the Division for certain disputes between unit owners and associations. The Division employs full time arbitrators and certifies private attorneys for mandatory nonbinding arbitration. An arbitrator's final decision is not binding, and any party may further pursue a matter in civil court. However, the parties may agree to be bound by the arbitrator's decision.[39]

The Condominium and Cooperative Acts require a party to petition for arbitration with the Division before filing a complaint in civil court for the following disputes between an association and a unit owner:[40]

- Termination of an association.
- Recall of a board member.
- Disputes where the board:
    - Requires an owner to take an action or refrain from any action involving the owner's unit.
    - Alters or adds to a common element.
    - Fails to provide proper notice for meetings or other actions.
    - Fails to properly conduct elections.
    - Fails to properly notice meetings.
    - Fails to allow inspection of the association's records.

The Division does not have jurisdiction for arbitration for the following disputes between a unit owner and an association:

- Disagreements regarding the interpretation or enforcement of a warranty;
- The charging of a fee or assessment;
- The eviction or other removal of a tenant from unit;
- Alleged breaches of fiduciary duty by one or more board members; and
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.[41]

The cost to petition the Division for arbitration is a $50 filing fee. The petition must include the specific nature of the dispute, demand for relief, and include proof that the petitioner provided the opposing party a notice of intent to petition for arbitration. Upon receipt of a petition for arbitration, the Division must determine if the dispute qualifies for arbitration. If the dispute does qualify for arbitration then the arbitrator must conduct the arbitration within 30 days.[42] The arbitrator must render his or her decision within 30 days of the arbitration.[43]

Either party in an arbitration proceeding may petition the arbitrator to have the proceeding sent to mediation. Upon the request for mediation, the arbitrator must contact all parties in the proceeding to determine if mediation is agreeable. An arbitrator may refer a proceeding to mediation even if all parties do not agree to mediation.[44]

If a matter is referred to mediation, the parties must select a mutually agreeable mediator. The arbitrator may provide a list of available mediators. Mediation is conducted in accordance with the

---

[39] S. 718.1225, & 719.1255, F.S; DBPR *Condominium Unit-Owner Rights and Responsibilities*, http://www.myfloridalicense.com/dbpr/lsc/documents/LSC4.pdf (last visited Mar. 27, 2019).
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*

Florida Rules of Civil Procedure. The parties in a mediation are required to equally share the costs of mediation.[45]

HOAs

Instead of arbitration, the HOA Act provides for a presuit mediation program for certain disputes between parcel owners and HOAs. The HOA act does not require mandatory arbitration by the Division unless the dispute involves elections or recalls of board members.

The following disputes between parcel owners and HOAs must go to presuit mediation before a party can file suit in civil court:

- Disputes involving the use of or changes to an owner's parcel or the common areas;
- Covenant disputes;
- Disputes regarding meetings of the board or committees of the board;
- Disputes involving the meeting of owners that do not involve elections;
- Access to the official records disputes; and
- Disputes regarding amendments to the governing documents.[46]

The following disputes are not subject to presuit mediation:

- Disputes involving the collection of assessments or other financial obligations; and
- Actions to enforce a prior mediation agreement.[47]

An aggrieved party initiates the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in statute and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. If emergency relief is required then a temporary injunction may be sought in court prior to the mediation.[48]

The opposing party has 20 days to respond. If the opposing party fails to respond or refuses to mediate then the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days of the petition being sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential and persons who are not parties to the dispute may not attend the mediation.[49]

If mediation is not successful in resolving all the issues between the parties, the parties may proceed to civil court or may elect to enter into binding or non-binding arbitration by the Division. All parties to the dispute must agree to enter into arbitration by the Division.[50]

Effect of the Bill

The bill authorizes a party to a condominium dispute to petition for presuit mediation in accordance with the HOA Act in lieu of arbitration prior to filing in civil court. However, the bill provides that election and recall disputes are not eligible for mediation in lieu of arbitration. Instead, election and recall disputes must be arbitrated by the Division or filed directly with a court of competent jurisdiction.

Condominium and HOA Fines and Suspensions

Current Situation

---

[45] *Id.*
[46] S. 720.311, F.S; Peter M. Dunbar & Charles F. Dudley, *The Law of Florida Homeowners Associations*, 77-78 (9th ed. 2013).
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*

Condominium associations and HOAs may levy fines against or suspend the right of an owner, occupant, or an owner or occupant's guest, to use the common elements for failing to comply with any provision in the association's declaration, bylaws, or rules.[51]

A board may not impose a fine or suspension without giving at least 14 days' written notice of the fine or suspension and the opportunity for a hearing. The hearing must be held before a committee of unit or parcel owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension.[52]

A fine approved by the committee must be paid to the association five days after the committee meeting. The condominium or HOA must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.[53]

Effect of the Bill

The bill provides that if a fine is approved by the committee, it must be paid to the association five days after notice of the approved fine is sent to the unit or parcel owner and, if applicable, to any tenant, licensee, or invitee of the owner, instead of five days after the meeting approving the fine.

Notice of Elections for Condominium Associations

Current Situation

Condominium Associations must mail, deliver, or electronically transmit notice of an election to unit owners at least 60 days before the election. Condominium associations must also mail, deliver, or electronically transmit a second notice of election to the unit owners along with a ballot listing all the candidates. However, no exact time is currently specified for the provision of the second notice.[54]

Effect of the Bill

The bill provides that the second notice must be mailed, delivered, or electronically transmitted to unit owners not less than 14 days or more than 34 days prior to the election.

Notice of Meetings for Condominium Associations

Current Situation

A condominium association must provide written notice of the association's annual meeting. The notice must include an agenda, and must be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting. The notice must also be posted in a conspicuous place on condominium property for at least 14 continuous days before the annual meeting or repeatedly broadcast with the agenda on a closed-circuit cable television system serving the association.[55]

Effect of the Bill

The bill provides that the requirements to provide written notice to each owner and conspicuously post such notice applies to all unit owner meetings, not just the annual meeting.

---

[51] Ss. 718.303(3) and 720.305(2)(a), F.S.
[52] *Id.*
[53] *Id.*
[54] S. 718.112(2)(d), F.S.
[55] S. 718.112(d), F.S.

The bill also provides that except for the annual meeting, the time-period that a condominium association must serve notice of meetings to the owners and conspicuously post such notice is determined by the association's bylaws. If the bylaws are silent, the notice must be sent to the unit owners and conspicuously posted at least 14 days before the meeting.

Notice of Meetings for HOAs

Current Situation

HOAs must notice all board meetings by posting notice in a conspicuous place on the HOA's property for at least 48 hours. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding parcel use is considered.[56]

HOAs are required to notice all member meetings by mailing, hand delivering, or electronically transmitting notice before the meeting and posting the notice in a conspicuous place before the meeting. If an HOA opts to broadcast notice in lieu of posting notice, it must do so at least four times during every broadcast hour of each day.[57] Additionally, when notice of an HOA meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the owner's parcel is located.[58]

In 2018, the Legislature passed a law allowing condominium and cooperatives to adopt rules for noticing all board and owner meetings on a website if the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must require the association to send an electronic notice providing a hyperlink to the website where the notice is posted to all unit owners whose email addresses are part of the official records in the same manner as notice for a member meeting. Notice by website does not remove the requirement to comply with the other notice requirements.[59]

Effect of the Bill

The bill amends HOA law to mirror condominium and cooperative law by allowing HOAs to adopt rules for noticing all board and owner meetings on a website if the time requirements for physically posting the notices are met. Any rule adopted for website notice must include a requirement that the association send an electronic notice providing a hyperlink to the website where the notice is posted to all parcel owners whose email addresses are part of the official records in the same manner as notice for a member meeting. Notice by website must be in addition to the other notice requirements.

The bill also provides that when notice of a meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address in the HOA's official records, instead of the address identified as the parcel's owner's mailing address on the property appraiser's website.

Cooperative Associations Video Conferencing

Current Situation

Cooperative association board members and committee members may attend meetings by telephone. If a board or committee member attends a meeting by telephone, a speaker must be used so the member may be heard by the rest of the board or committee and by any unit owners in attendance.[60]

---

[56] Ss. 718.112(2), 719.106(1), & 720.303(2)(c), F.S.
[57] *Id.*
[58] S. 720.306(1)(g), F.S.
[59] *See* House Analysis, *supra* note 25.
[60] S. 719.106(1)(b), F.S.

Effect of the Bill

The bill provides that cooperative association board members and committee members may attend meetings by telephone, real time video conferencing, or by using a similar real-time electronic or video communication. If a board or committee member attends a meeting by telephone, video, or electronic or video communication, a speaker must be used so the member may be heard by the rest of the board or committee and by any unit owners in attendance.

HOA Swimming Pools

Current Situation

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. If DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied. DOH is authorized to establish a schedule of fees for plan approval and permitting.[61] Operating permits must be renewed annually and may be transferred from one name or owner to another.[62]

DOH may, at any reasonable time, enter any and all parts of a public swimming pool to examine and investigate the pool's sanitary and safety conditions.[63] County health departments are responsible for the routine surveillance of water quality in all public swimming pools.[64]

Pools that are used by condominiums or cooperatives with 32 units or less and which are not being operated as public lodging establishments are exempt from DOH's public pools requirements, except for maintaining water quality standards.[65] HOA pools are not exempt from DOH regulation even where the HOA has 32 homes or less.

Effect of the Bill

The bill provides that pools for HOAs and other property associations that have 32 parcels or less and are not being operated as public lodging establishments are also exempt from DOH's public pools requirements, except for maintaining water quality standards.

Condominium Ombudsman

Current Situation

Within the Division is housed the Office of the Condominium Ombudsman (Ombudsman). The Ombudsman is an attorney appointed by the Governor to serve as a neutral resource for unit owners and condominium associations. The Ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the Division, and the Legislature on any matter or subject within the jurisdiction of the Division. In addition, the Ombudsman may make recommendations to the Division for changes in rules and procedures for the filing, investigation, and resolution of complaints.[66]

[61] S. 514.033, F.S.
[62] Ss. 514.031(2) and (3), F.S.
[63] S. 514.04, F.S.
[64] S. 514.025, F.S.
[65] S. 514.0115(2), F.S.
[66] Ss. 718.5011 & 718.5012, F.S.

The Ombudsman also acts as a liaison between the Division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[67]

The Ombudsman is required to keep his or her principal office in Leon County, Florida, on Division premises or, if suitable space cannot be provided on such premises, in a place convenient to the Division. However, the Ombudsman may establish branch offices elsewhere in the state with the Governor's approval.

Effect of the Bill

The bill deletes the requirement that the Ombudsman keep his or her principal office in Leon County, Florida, but maintains the requirement that the Ombudsman's office be in a place convenient to the Division.

The Fourteenth Amendment of the U.S. Constitution and Article II of the Florida Constitution

Current Situation

Section 1 of the Fourteenth Amendment of the U.S. Constitution provides that:[68]

- Every person born or naturalized in the U.S. is a citizen of the U.S. and the state where they live;
- Every person has equal protection of the laws;
- No state may curtail the privileges or immunities of citizens; and
- No state may deprive any person of life, liberty, or property without due process.

The Fourteenth Amendment only applies to the states, not private parties. However, the United States Supreme Court ruled that a racially restrictive private covenant in a land deed violates the Fourteenth Amendment. The Supreme Court determined that even though a restrictive covenant is between private parties, because a state court was the entity that had to enforce the covenant, the covenant violated the Fourteenth Amendment.[69]

According to news articles, residents in Florida and across the country have discovered old restrictions and covenants in deeds and community association governing documents prohibiting minorities from owning or renting property in the neighborhood. These restrictions cannot be enforced because they violate the Fourteenth Amendment as well as the Federal Fair Housing Act and the Florida Fair Housing Act, which applies if the property is in Florida.[70] However, these restrictions and covenants can be difficult to remove.[71]

Article I, section 2, of the Florida Constitution is similar to the Fourteenth Amendment in the U.S. Constitution, establishing the basic rights of all natural persons in Florida and providing that all such persons:[72]

---

[67] *Id.*
[68] U.S. Const. amend. XIV, §1.
[69] *Shelley v. Kramer*, 68 S.Ct. 836 (U.S. 1948).
[70] The Federal Fair Housing Act and the Florida Fair Housing Act prohibit discrimination in home sales, financing, and rentals based on race, color, sex, pregnancy, disability, nationality, religion, and familial status. *See* 42 U.S.C. § 3601-189; *See* Ch. 760, part II, F.S.
[71] TaMaryn Waters, *Attorney Wants outdated, racist covenant language in Betton Hills stripped*, Tallahassee Democrat (July 1, 2019), https://www.tallahassee.com/story/news/money/2019/07/01/attorney-wants-outdated-racist-covenant-language-betton-hills-stripped-tallahassee/1546406001/ (last visited Jan. 23, 2020); *Judy L. Thomas, 'Curse of covenant' persists — restrictive rules, while unenforceable, have lingering legacy*, The Kansas City Star (July 27, 2016), https://www.kansascity.com/news/local/article92156112.html (last visited Jan. 23, 2020); Rachel Spacek, *'No persons other than persons of the White race': Racist language remains in older Idaho homes' documents*, Idaho Press (Nov. 5, 2019), https://www.idahopress.com/news/local/no-persons-other-than-persons-of-the-white-race-racist/article_167d13e1-59ce-5f03-b1e1-771709da5e4b.html (last visited Jan. 23, 2020).
[72] Art. I, s. 2, Fla. Const.

- Are equal before the law;
- Have inalienable rights, including the right to:
    - Enjoy and defend life and liberty;
    - Pursue happiness;
    - Be rewarded for industry; and
    - To acquire, possess, and protect property; and
- May not be deprived of any right because of race, religion, national origin, or physical disability.

Effect of the Bill

The bill restates that any provision in a community association's declaration, bylaws, or rules that violates any right under the Fourteenth Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution is void and unenforceable, and no action is required by an association to remove or amend such provisions because they cannot be enforced.

The bill also provides that a community association may record a notice in the county in which it is located indicating that it does not intend to enforce any regulation in its declaration, bylaws, or rules that violates the Fourteenth Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution. However, the bill specifies that an association's failure to record such notice may not be the basis for liability or evidence of discrimination or an intent to discriminate.

B. SECTION DIRECTORY:

Section 1: Amends s. 514.0015, F.S., relating to exemptions from supervision or regulation; variances.

Section 2: Amends s. 627.714, F.S., relating to residential condominium unit owner coverage; loss assessment coverage required.

Section 3: Amends s. 718.111, F.S., relating to the association.

Section 4: Amends s. 718.112, F.S, relating to bylaws.

Section 5: Amends s. 718.113, F.S., relating to maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.

Section 6: Amends s. 718.1255, F.S., relating to alternative dispute resolution; voluntary mediation, mandatory nonbinding arbitration; legislative findings.

Section 7: Amends s. 718.303, F.S., relating to obligations of owners and occupants; remedies.

Section 8: Amends s. 718.5014, F.S., relating to ombudsman location.

Section 9: Amends s. 719.103, F.S., relating to definitions.

Section 10: Amends s. 719.104, F.S., cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 11: Amends s. 719.106, F.S., relating to bylaws; cooperative ownership.

Section 12: Amends s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 13: Amends s. 720.305, F.S., relating to obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.

Section 14: Amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 15: Amends s. 720.3075, F.S, relating to prohibited clauses in association documents.

Section 16: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is unknown if prohibiting condominium owners' insurance policies from providing rights of subrogation against the association will increase or decrease the cost of condominium unit owners' insurance policies.

According to DBPR, "The proposal regarding presuit mediation as an option to arbitration will raise costs to unit owners involved in a dispute with their association."[73]

D. FISCAL COMMENTS:

It is unknown whether the change in classification of cooperatives from personal to real property for the purpose of estate taxes or laws related to devise and descent will have an impact on state revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[73] Florida Department of Business and Professional Regulation, Agency Analysis of 2020 House Bill 623, p. 6 (February 7, 2020).

Not applicable. The bill does not appear to effect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DBPR,[74]

"Benefits of current situation regarding Arbitration:

- Section 718.1255(3)(a), F.S., provides that the Legislature finds that unit owners are frequently at a disadvantage when litigating against an association as the association is better able to bear the costs and expenses of litigation than a unit owner who must rely their own financial resources.
- More efficient and cost-effective option to court litigation as the filing fee is only $50.
- Speedier than court which will have a significant delay.
- Awarding of attorney fees to the prevailing party is determined by the division.
- No cost mediation currently offered by the division.
- Since 2006, less than 1% of arbitration cases are challenged by a Trial De Novo.
- Since 2009, 88% of the cases filed with arbitration are concluded by arbitration, with only 12% concluded by mediation.

Disadvantages and costs associated to unit owners with the proposal [provisions contained in the bill]:

- Pursuant to s. 720.311(2)(a), F.S., an average mediation may require three to four hours of a mediator's time, plus preparation time.
- Private mediators typically charge $300 to $500 hundred per hour. Four hours of mediation and two hours of preparation time at $300 per hour would result in a $1,800 cost. The unit owner in the dispute would owe $900 in addition to the unit owner's cost to obtain an attorney.
- Currently, only 12% of all arbitration cases are referred to mediation. Of the 12%, there is only a 37% success rate for mediation.
- Allow the parties to bypass arbitration for condominium recall and election disputes and requiring civil court action. However, court trials of condominium recalls and election disputes will not be completed prior to next annual election.
- Comparing a condominium association to a homeowners' association as disputes in each are currently handled differently.
- The proposal appears to contradict the legislative findings in s. 718.1255(3)(a), F.S."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 11, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Corrects a scrivener's error by correcting a reference to the Florida Constitution, from article II, to article I, section 2.
- Permits a unit owner in a condominium association to install an alternative fuel station for an alternative fuel motor vehicle within the boundaries of the owner's limited common element or exclusively designated parking area.

[74] *Id.* at 7.

On January 22, 2020, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that the records a condominium association must maintain are written records related to the association's obligation.
- Required condominium association bylaws to provide for mandatory alternative dispute resolution, not just mandatory non-binding arbitration.
- Changes references from "alternative fuel station" to "natural gas fuel station," providing that a condominium association may not prevent a unit owner from installing a natural gas fuel station within his or her exclusively-designated or limited common element parking space.
- Required either mandatory non-binding arbitration or presuit mediation of condominium disputes prior to initiating litigation of the dispute in court, with the exception of election and recall disputes, which must be arbitrated by the Division or filed with a court of competent jurisdiction.

This analysis is drafted to the committee substitute to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to community associations; amending s. 514.0115, F.S.; exempting certain property association pools from Department of Health regulations; amending s. 627.714, F.S.; prohibiting subrogation rights against a condominium association under certain circumstances; amending s. 718.111, F.S.; requiring certain records to be maintained for a specified time; prohibiting an association from requiring certain actions related to the inspection of records; revising requirements relating to certain condominium associations posting digital copies of certain documents; amending s. 718.112, F.S.; prohibiting certain provisions in governing documents; authorizing the association to record certain notice in the public record; limiting liability; specifying that only board service that occurs on or after a specified date may be used for calculating a board member's term limit; providing requirements for certain notices; prohibiting an association from charging certain fees; providing an exception; requiring certain governing documents to provide for mandatory alternative dispute resolution instead of arbitration; deleting a prohibition against employing or contracting with certain service providers; amending s. 718.113, F.S.;

revising regulations for electric vehicles; providing definitions; providing that an association may not prohibit a unit owner from installing a natural gas fuel station; providing requirements for installing such fuel station; amending s. 718.1255, F.S.; revising alternative dispute resolution requirements; authorizing parties to initiate presuit mediation rather than arbitration in certain disputes; amending s. 718.303, F.S.; revising requirements for certain actions for failure to comply with specified provisions; revising requirements for certain fines; amending s. 718.5014, F.S.; revising the location of the principal office of the Office of the Condominium Ombudsman; amending s. 719.103, F.S.; revising the definition of the term "unit" to specify that an interest in a cooperative unit is an interest in real property; amending s. 719.104, F.S.; prohibiting an association from requiring certain actions related to the inspection of records; amending s. 719.106, F.S.; revising provisions related to a quorum and voting rights for members remotely participating in meetings; prohibiting certain provisions in governing documents; authorizing the association to record certain notice in the public record; limiting liability; amending s. 720.303, F.S.; authorizing an association to adopt

procedures for electronic meeting notices; revising the documents that constitute the official records of an association; amending s. 720.305, F.S.; providing requirements for certain fines; amending s. 720.306, F.S.; revising requirements for providing certain notices; amending s. 720.3075, F.S.; prohibiting certain provisions in governing documents; authorizing the association to record certain notice in the public record; limiting liability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 514.0115, Florida Statutes, is amended to read:

514.0115 Exemptions from supervision or regulation; variances.—

(2)(a) Pools serving condominium, cooperative, and homeowners' associations, as well as other property associations, which have no more than 32 ~~condominium or cooperative~~ units or parcels and which are not operated as ~~a~~ public lodging establishments are ~~establishment shall be~~ exempt from supervision under this chapter, except for water quality.

Section 2. Subsection (4) of section 627.714, Florida Statutes, is amended to read:

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

(4) Every individual unit owner's residential property policy must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. If a condominium association's insurance policy does not provide rights for subrogation against the unit owners in the association, an insurance policy issued to an individual unit owner located in the association may not provide rights of subrogation against the condominium association.

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

718.111 The association.—

(12) OFFICIAL RECORDS.—

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

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

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

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

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

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

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

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

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

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

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

the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

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

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

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

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

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the

election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

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

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

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

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

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

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

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after

receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative in ~~pursuant to the~~ compliance with ~~requirements of~~ this chapter unless the association has an affirmative duty not to disclose such information under ~~pursuant to~~ this chapter.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying, but may not require a member to

demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

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

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

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

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

b. Information obtained by an association in connection

with the approval of the lease, sale, or other transfer of a unit.

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

d. Medical records of unit owners.

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

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

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

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

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

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

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

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

or application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

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

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

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

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

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

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

the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

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

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

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

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

j. Any contract or document regarding a conflict of

interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

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

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

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents ~~online~~.

Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under ~~pursuant to~~ this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

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

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

718.112 Bylaws.—

(1) GENERALLY.—

(c) Any provision of the declaration, the association bylaws, or reasonable rules or regulations of the association which diminish or infringe upon any right protected under the Fourteenth Amendment to the United States Constitution or s. 2, Art. I of the State Constitution is void and unenforceable without further action of the association. The association may record a notice in the public records of the county in which the condominium is located evidencing its intention to not enforce such provision. The failure of the association to record a notice in the public record may not be the basis for liability

or evidence of discrimination or a discriminatory intention.

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

(d) Unit owner meetings.—

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

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

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

candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda; ~~, must~~ be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; ~~,~~ and ~~must~~ be posted in a conspicuous place on the condominium property at least 14

continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property in accordance with the minimum period of time for posting a notice as set forth in the bylaws, and if the bylaws do not provide such notice requirements, then at least 14 continuous days before the meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the

agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person

providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

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

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists

all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an

election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of

suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

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

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive

notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass e-mails ~~emails~~ sent to members on behalf of the association in the course of giving electronic notices.

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

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

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by

paragraph (j) and rules adopted by the division.

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

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(i) Transfer fees.—An association may not ~~no~~ charge an applicant any fees, except the actual costs of any background check or screening performed ~~shall be made~~ by the association, ~~or any body thereof~~ in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Except for the actual costs of any background check or screening performed by the association, any such fee may be

preset, but may not ~~in no event may such fee~~ exceed $100 per applicant other than spouses or parent and dependent child, who ~~husband/wife or parent/dependent child, which~~ are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, a charge may not ~~no charge shall~~ be made. The foregoing notwithstanding, an association may, if the authority to do so appears in the declaration, articles, or bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1 month's rent, into an escrow account maintained by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83.

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

~~(p) Service providers; conflicts of interest.—An association, which is not a timeshare condominium association, may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or~~

~~marriage of a board member or officer. This paragraph does not apply to a service provider in which a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.~~

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

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

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

(a) A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner

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

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

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

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

(e) ~~(d)~~ The unit owner who is installing an electric vehicle charging station or natural gas fuel station is responsible for the costs of installation, operation, maintenance, and repair, including, but not limited to, hazard

and liability insurance. The association may enforce payment of such costs under ~~pursuant to~~ s. 718.116.

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

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

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

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

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

3. Engage the services of a licensed and registered firm ~~electrical contractor or engineer~~ familiar with the installation

or removal and core requirements of an electric vehicle charging station or natural gas fuel station.

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

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

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

Section 6. Subsections (5) and (6) of section 718.1255, Florida Statutes, are renumbered as subsections (6) and (7), respectively, paragraph (a) of subsection (4) of that section is amended, and a new subsection (5) is added to that section, to

read:

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

(4) ~~MANDATORY~~ NONBINDING ARBITRATION AND MEDIATION OF DISPUTES.—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this chapter. A ~~No~~ person may not be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar. Arbitrator certification is valid for 1 year. An arbitrator who does not maintain the minimum qualifications for initial

certification may not have his or her certification renewed. The department may not enter into a legal services contract for an arbitration hearing under this chapter with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute. The department shall adopt rules of procedure to govern such arbitration hearings including mediation incident thereto. The decision of an arbitrator is ~~shall be~~ final; however, a decision is ~~shall~~ not ~~be~~ deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator is ~~shall be~~ admissible in evidence in the trial de novo.

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

(5) PRESUIT MEDIATION.—In lieu of the initiation of nonbinding arbitration as set forth in subsections (1)-(4), a

party may submit a dispute to presuit mediation in accordance with s. 720.311. Election and recall disputes are not eligible for mediation and such disputes must be arbitrated by the division or filed with a court of competent jurisdiction.

Section 7. Subsection (1) and paragraph (b) of subsection (3) of section 718.303, Florida Statutes, are amended to read:

718.303 Obligations of owners and occupants; remedies.—

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

(a) The association.

(b) A unit owner.

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

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

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

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

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

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first

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

Section 8. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office in a ~~Leon County on the premises of the division or, if suitable space cannot be provided there, at another~~ place convenient to the offices of the division which

will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 9. Subsection (25) of section 719.103, Florida Statutes, is amended to read:

719.103 Definitions.—As used in this chapter:

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

Section 10. Paragraph (c) of subsection (2) of section 719.104, Florida Statutes, is amended to read:

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

(2) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying, but may not require a member to

demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A member ~~unit owner~~ who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under ~~pursuant to~~ s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end

financial information required by the department, on the cooperative property to ensure their availability to members ~~unit owners~~ and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to members ~~unit owners~~:

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

or proceedings.

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

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

4. Medical records of unit owners.

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

telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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

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

Section 11. Paragraph (b) of subsection (1) of section 719.106, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

719.106 Bylaws; cooperative ownership.—

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

(b) Quorum; voting requirements; proxies.—

1. Unless otherwise provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of voting interests, and

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

2. Except as specifically otherwise provided herein, after January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (j)2., for votes taken to waive the financial reporting requirements of s. 719.104(4)(b), for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this section, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the

use of general proxies or require the use of limited proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare cooperative.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the unit owner executing it.

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

5. A board or committee member participating in a meeting via telephone, real-time video conferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present ~~When some or all of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone~~. A ~~telephone~~ speaker must ~~shall~~ be used ~~utilized~~ so that the conversation of such ~~those board or committee~~ members ~~attending by telephone~~ may be heard by the

board or committee members attending in person, as well as by any unit owners present at a meeting.

(3) GENERALLY.—Any provision of the declaration, the association bylaws, or reasonable rules or regulations of the association which diminish or infringe upon any right protected under the Fourteenth Amendment to the United States Constitution or s. 2, Art. I of the State Constitution is void and unenforceable without further action of the association. The association may record a notice in the public records of the county in which the cooperative is located evidencing its intention to not enforce such provision. The failure of the association to record a notice in the public record may not be the basis for liability or evidence of discrimination or a discriminatory intention.

Section 12. Paragraph (l) of subsection (4) of section 720.303, Florida Statutes, is redesignated as paragraph (m), paragraph (c) of subsection (2) is amended, and a new paragraph (l) is added to subsection (4) of that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(2) BOARD MEETINGS.—

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

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

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

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

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

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

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

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

Section 13. Subsections (1) and (2) of section 720.305, Florida Statutes, are amended to read:

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

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply

with, this chapter and~~,~~ the governing documents of the community~~, and the rules of the association~~. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) An ~~The~~ association may levy reasonable fines. A fine may not exceed $100 per violation against any member or any

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

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

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first

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

Section 14. Paragraph (g) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

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

(1) QUORUM; AMENDMENTS.—

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

Section 15. Subsection (6) is added to section 720.3075, Florida Statutes, to read:

720.3075 Prohibited clauses in association documents.—

(6) Any provision of the declaration, the association bylaws, or reasonable rules or regulations of the association which diminish or infringe upon any right protected under the Fourteenth Amendment to the United States Constitution or s. 2, Art. I of the State Constitution is void and unenforceable without further action of the association. The association may record a notice in the public records of the county in which the community is located evidencing its intention to not enforce such provision. The failure of the association to record a notice in the public record may not be the basis for liability or evidence of discrimination or a discriminatory intention.

Section 16. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

HB 623 by Rep. Shoaf
Community Associations

AMENDMENT SUMMARY
February 27, 2020

Amendment 1 by Rep. Shoaf (Strike-all amendment):
The strike-all amendment:

- Increases the fee for transfer of a condominium from $100 to $150, and the fees shall be adjusted every 5 years for inflation.
- Provides that any provision in any title transaction that violates any right under the 14th Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution is unenforceable, and any such provision in a previously recorded title transaction is extinguished and severed from the recorded title transaction.
- Provides that an association board may, at the request of an owner, remove a restriction that violates any right under the 14th Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution.
- Allows a condominium developer to withdraw escrow funds from the sale of a condominium unit for the costs incurred by the developer instead of the actual construction costs to develop the condominium.
- Provides that if the governing documents of an HOA do not obligate a developer to create reserve accounts or the HOA has not provided for reserve accounts by majority vote, the HOA must include a statement on its financial reports.
- Repeals current law providing that if a developer initially funds a reserve account for an HOA, the developer has created a reserve account, which must be funded unless waived by the members.
- Requires condominiums to maintain official records in a manner determined by DBPR, and allows DBPR to investigate complaints related to the maintenance of official records.
- Requires condominiums to provide a checklist to a unit owner who is requesting official records.
- Defines the term "financial issue" and authorizes DBPR to investigate complaints related to the financial issues of a condominium.
- Allows DBPR to adopt rules to establish requirements for certain training programs.
- Provides that the installation of a natural gas fuel station may not be the basis for filing a lien against a condominium association, but it may be the basis for filing a lien against the unit owner installing the station.
- Makes conforming changes to the Condominium Act, Cooperative Act, and the HOA Act related to arbitration and mediation and DBPR's arbitration program.
- Provides that amendments to an HOA's governing documents related to the prohibition or regulation of rentals only applies to owners consenting to the amendment or owners who acquire a parcel after the effective date of the amendment. However, amendments prohibiting or regulating rentals that are for less than six months or prohibiting or regulating parcels that are rented more than three times in a calendar year apply to all parcel owners.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative Shoaf offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (2) of section 514.0115, Florida Statutes, is amended to read:

514.0115 Exemptions from supervision or regulation; variances.—

(2)(a) Pools serving condominium, cooperative, and homeowners' associations, as well as other property associations, which have no more than 32 ~~condominium or cooperative~~ units or parcels and which are not operated as ~~a~~ public lodging establishments are ~~establishment shall be~~ exempt from supervision under this chapter, except for water quality.

Section 2. Subsection (4) of section 627.714, Florida Statutes, is amended to read:

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

(4) Every individual unit owner's residential property policy must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. If a condominium association's insurance policy does not provide rights for subrogation against the unit owners in the association, an insurance policy issued to an individual unit owner located in the association may not provide rights of subrogation against the condominium association.

Section 3. Section 712.065, Florida Statutes, is created to read:

712.065 Extinguishment of discriminatory restrictions.—

(1) As used in this section, the term "discriminatory restriction" means a provision in a title transaction recorded in this state which restricts the ownership, occupancy, or use of any real property in this state by any natural person on the basis of a characteristic that has been held, or is held after July 1, 2020, by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under

s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability.

(2) A discriminatory restriction is not enforceable in this state, and all discriminatory restrictions contained in any title transaction recorded in this state are unlawful, are unenforceable, and are declared null and void. Any discriminatory restriction contained in a previously recorded title transaction is extinguished and severed from the recorded title transaction and the remainder of the title transaction remains enforceable and effective except for the severed discriminatory restriction. The recording of any notice preserving or protecting interests or rights pursuant to s. 712.05 does not reimpose or preserve any discriminatory restriction that is extinguished under this section.

(3) Upon request of a parcel owner, a discriminatory restriction appearing in a covenant or restriction affecting the parcel may be removed from the covenant or restriction by an amendment approved by a majority vote of the board of directors of the respective property owners' association or an owners' association in which all owners may voluntarily join, notwithstanding any other requirements for approval of an amendment of the covenant or restriction. Unless the amendment also changes other provisions of the covenant or restriction, the recording of an amendment removing a discriminatory

restriction does not constitute a title transaction occurring after the root of title for purposes of s. 712.03(4).

Section 4. Paragraphs (a), (b), (c), (f) and (g) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

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

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

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

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

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

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

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

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

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

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

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

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is

personally subject to a civil penalty under s. 718.501(2)(d) ~~pursuant to s. 718.501(1)(d)~~. The accounting records must include, but are not limited to:

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

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

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

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

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

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

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

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

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

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

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

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. All official records must be maintained in a manner and format determined by the division so that the records are easily accessible for inspection. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official

records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative in ~~pursuant to the~~ compliance with ~~requirements of~~ this chapter unless the association has an affirmative duty not to disclose such information under ~~pursuant to~~ this chapter.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit only has a right to inspect and copy the declaration of condominium and association's bylaws and rules. The association must provide a checklist to the member or the authorized representative of such member of all records that are made available for inspection and copying in response to a written request. If any of the association's official records are not available, such records must be identified on the checklist provided to the person requesting the records. The checklist

must be signed by a manager, licensed pursuant to chapter 468 who certifies that the checklist is accurate to the best of his or her knowledge and belief, or the association must provide the person requesting the records with a sworn affidavit attesting to the veracity of the checklist and executed by the person responding to the written request on behalf of the association. The association must maintain a copy of the checklist and affidavit for at least 7 years. Delivery of the checklist and, if required, the sworn affidavit to the person requesting the records creates a rebuttable presumption that the association complied with this paragraph. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of

the records who, directly or indirectly, knowingly denied access to the records.

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

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

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

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

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

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

d. Medical records of unit owners.

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

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

g. The software and operating system used by the association which allow the manipulation of data, even if the

owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(2)(d)6. ~~s. 718.501(1)(d)6.~~ against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

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

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

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

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

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

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

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

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

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

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

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

the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

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

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

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

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

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

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

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

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the

information is redacted before posting the documents ~~online~~. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under ~~pursuant to~~ this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

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

Section 5. Paragraphs (d), (i), (j), (k), and (p) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (c) is added to subsection (1) of that section, to read:

718.112 Bylaws.—

(1) GENERALLY.—

(c) The association may extinguish a discriminatory restriction, as defined in s. 712.065(1) pursuant to s. 712.065.

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

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held

within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term

limit. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has

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

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda;~~, must~~ be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting;~~,~~ and ~~must~~ be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property in accordance with the minimum period of time for posting a notice as set forth in the bylaws, and if the bylaws do not provide such notice requirements, then at least 14 continuous days before the meeting. Upon notice to the unit

owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send

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

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or

elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of

the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or

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

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

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

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

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

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

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

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

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

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(i) Transfer fees.—No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed $150 ~~$100~~ per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. The fees specified in this subsection shall be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar,

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

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

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and

hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. Such member or members shall be recalled effective immediately upon conclusion of the board meeting, provided that the recall is facially valid. A recalled member must turn over to the board, within 10 full business days after the vote, any and all records and property of the association in their possession.

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

3. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall turn

over to the board within 10 full business days after the vote any and all records and property of the association.

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

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

association during the period after a recall but before the recall election.

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

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

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

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

Section 6. Subsection (8) of section 718.113, Florida Statutes, is amended to read:

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

(8) The Legislature finds that the use of electric and natural gas fuel vehicles conserves and protects the state's environmental resources, provides significant economic savings to drivers, and serves an important public interest. The participation of condominium associations is essential to the

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

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

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

(c) The electricity for the electric vehicle charging station or natural gas fuel station must be separately metered

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

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

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

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

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

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

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

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

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

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

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

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

Section 7. Subsection (16) of section 718.117, Florida Statutes, is amended to read:

718.117 Termination of condominium.—

(16) RIGHT TO CONTEST.—A unit owner or lienor may contest a plan of termination by initiating a petition in accordance with ~~for mandatory nonbinding arbitration pursuant to~~ s. 718.1255 within 90 days after the date the plan is recorded. A unit owner or lienor may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners, that the liens of the first mortgages of unit owners other than the bulk owner have not or will not be satisfied to the extent required by subsection (3), or that the required vote to approve the plan was not obtained. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property. In an action contesting a plan of termination, the person

contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable or that the required vote was not obtained. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in subsection (12). If the petition is filed with the division for arbitration, the arbitrator shall determine the rights and interests of the parties in the apportionment of the sale proceeds. If the arbitrator determines that the apportionment of sales proceeds is not fair and reasonable, the arbitrator may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, the arbitrator may void the plan or grant other relief it deems just and proper. The arbitrator shall automatically void the plan upon a finding that any of the disclosures required in subparagraph (3)(c)5. are omitted, misleading, incomplete, or inaccurate. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the condominium property or the vesting of the condominium property in the trustee, but shall only be a claim against the proceeds of the

plan. In any such action, the prevailing party shall recover reasonable attorney fees and costs.

Section 8. Subsection (2) of section 718.121, Florida Statutes, is amended to read:

718.121 Liens.—

(2) Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to part I of chapter 713, the Construction Lien Law, against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished for the installation of a natural gas fuel station or an electronic vehicle charging station pursuant to s. 718.113(8) may not be the basis for filing a lien under part I of chapter 713 against the association, but such a lien may be filed against the unit owner. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements, but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

Section 9. Subsections (5) and (6) of section 718.1255, Florida Statutes, are renumbered as subsections (6) and (7), respectively, paragraph (a) of subsection (4) of that section is

amended, and a new subsection (5) is added to that section, to read:

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

(4) ~~MANDATORY~~ NONBINDING ARBITRATION AND MEDIATION OF DISPUTES.—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this chapter. A ~~no~~ person may not be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar. Arbitrator certification is valid for 1 year. An arbitrator who

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

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

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

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

718.202 Sales or reservation deposits prior to closing.—

(3) If the contract for sale of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He or she may use the funds for the actual costs incurred by the developer in the ~~actual~~ construction and development of the condominium property in which the unit to be sold is located. Actual costs include, but are not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons; ~~or~~ for advertising, marketing, or promotional purposes; or for loan fees, costs or interest, attorney fees, accounting fees, or insurance. A contract which permits use of

the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

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

718.303 Obligations of owners and occupants; remedies.—

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

(a) The association.

(b) A unit owner.

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

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

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

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

(3) The association may levy reasonable fines for the failure of the owner of the unit or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a

committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

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

Section 12. Present subsections (1) and (2) of section 718.501, Florida Statutes, are redesignated as subsections (2)

and (3), respectively, a new subsection (1) is added to that section and paragraphs (h) and (j) of present subsection (1) of that section are amended, to read:

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

(1) As used in this section, the term "financial issue" means an issue related to operating budgets; reserve schedules; accounting records under s. 718.111(12)(a)11.; notices of meetings; minutes of meetings discussing budget or financial issues; assessments for common expenses, fees, or fines; the commingling of funds; and any other record necessary to determine the revenues and expenses of the association. The division may adopt rules to further define what a financial issue is under this section and may adopt a rule outlining the requirements of the checklist under s. 718.111(c)1.

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

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

(h) The division shall furnish each association that pays the fees required by paragraph (3)(a) ~~(2)(a)~~ a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

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

Section 13. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office in a ~~Leon County on the premises of~~

~~the division or, if suitable space cannot be provided there, at another~~ place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 14. Subsection (25) of section 719.103, Florida Statutes, is amended to read:

719.103 Definitions.—As used in this chapter:

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

Section 15. Paragraph (c) of subsection (2) of section 719.104, Florida Statutes, is amended to read:

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

(2) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the

frequency, time, location, notice, and manner of record inspections and copying, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A member ~~unit owner~~ who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under ~~pursuant to~~ s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and

all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to members ~~unit owners~~ and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to members ~~unit owners~~:

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

proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

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

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the

name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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

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

Section 16. Paragraphs (b), (f), and (l) of subsection (1) of section 719.106, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

719.106 Bylaws; cooperative ownership.—

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

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

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

2. Except as specifically otherwise provided herein, after January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (j)2., for votes taken to waive the financial reporting requirements of s. 719.104(4)(b), for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items

for which a limited proxy is required and given. Notwithstanding the provisions of this section, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare cooperative.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the unit owner executing it.

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

5. A board or committee member participating in a meeting via telephone, real-time video conferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present ~~When some or all of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum~~

~~and may vote by telephone~~. A ~~telephone~~ speaker must ~~shall~~ be used ~~utilized~~ so that the conversation of such ~~those board or committee~~ members ~~attending by telephone~~ may be heard by the board or committee members attending in person, as well as by any unit owners present at a meeting.

(f) Recall of board members.—Subject to s. 719.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the voting interests to recall any member of the board of administration may be called by 10 percent of the unit owners giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

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

the association in their possession, or shall proceed as set forth in subparagraph 3.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration pursuant to the procedures of s. 719.1255 or file an action with a court of competent jurisdiction. For purposes of this paragraph, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration or action with a court of competent jurisdiction. If

the arbitrator or court certifies the recall as to any member of the board, the recall shall be effective upon the final order of the court or the mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator or court, the division may take action pursuant to s. 719.501. Any member so recalled shall deliver to the board any and all records and property of the association in the member's possession within 5 full business days after the effective date of the recall.

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

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

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

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

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

8. The division or a court of competent jurisdiction may not accept for filing a recall petition or action, whether filed pursuant to subparagraph 1., subparagraph 2., subparagraph 5., or subparagraph 7. and regardless of whether the recall was

certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

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

(3) GENERALLY.—The association may extinguish a discriminatory restriction, as defined in s. 712.065(1), pursuant to s. 712.065.

Section 17. Paragraph (l) of subsection (4) of section 720.303, Florida Statutes, is redesignated as paragraph (m), a new paragraph (l) is added to that subsection, and paragraph (c) of subsection (2), present paragraph (l) of subsection (4), and paragraphs (c) and (d) of subsection (6), and paragraphs (b), (d), (g), (k), and (l) of subsection (10) of that section are amended, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(2) BOARD MEETINGS.—

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

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

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

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

broadcast on closed-circuit cable television not less than 14 days before the meeting.

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

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

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

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

(6) BUDGETS.—

(c)1. If the budget of the association does not provide for reserve accounts pursuant to paragraph (d), or the declaration of covenants, articles, or bylaws do not obligate

the developer to create reserves, and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided or not fully funded, then each financial report for the preceding fiscal year required by subsection (7) must contain the following statement in conspicuous type:

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

2. If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established pursuant to paragraph (d), each financial report for the preceding fiscal year required under subsection (7) must also contain the following statement in conspicuous type:

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

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

reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided in paragraph (f).

(10) RECALL OF DIRECTORS.—

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

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

3. When it is determined by the department pursuant to binding arbitration proceedings or a court of competent jurisdiction that an initial recall effort was defective, written recall agreements or written ballots used in the first

recall effort and not found to be defective may be reused in one subsequent recall effort. However, in no event is a written agreement or written ballot valid for more than 120 days after it has been signed by the member.

4. Any rescission or revocation of a member's written recall ballot or agreement must be in writing and, in order to be effective, must be delivered to the association before the association is served with the written recall agreements or ballots.

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

(d) If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file an action with a court of competent jurisdiction or file with the department a petition for binding arbitration pursuant to the applicable procedures in ss. 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For the purposes of this section, the members who voted at the meeting or who executed the agreement in writing shall constitute one party

under the petition for arbitration or action in a court of competent jurisdiction. If the arbitrator or court certifies the recall as to any director or directors of the board, the recall will be effective upon the final order of the court or the mailing of the final order of arbitration to the association. The director or directors so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.

(g) If the board fails to duly notice and hold the required meeting or fails to file the required petition or action, the unit owner representative may file an action in a court of competent jurisdiction or a petition pursuant to s. 718.1255 challenging the board's failure to act. The petition or action must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this paragraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

(k) A board member who has been recalled may file an action with a court of competent jurisdiction or file a petition pursuant to ss. 718.112(2)(j) and 718.1255 and the rules adopted challenging the validity of the recall. The petition or action must be filed within 60 days after the recall is deemed

certified. The association and the unit owner representative shall be named as respondents.

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

Section 18. Subsections (1) and (2) of section 720.305, Florida Statutes, are amended to read:

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

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter and~~,~~ the governing documents of the community~~, and the rules of the association~~. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) An ~~The~~ association may levy reasonable fines. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed

$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

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

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

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

Section 19. Paragraph (g) of subsection (1) and paragraph (c) of subsection 9 of section 720.306, Florida Statutes, are amended, and paragraph (h) is added to subsection (1) to read:

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

(1) QUORUM; AMENDMENTS.—

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

parcel owner has consented, in writing, to receive notice by electronic transmission.

(h)1. Except as provided herein, an amendment to any governing document enacted after July 1, 2020, that prohibits a parcel owner from renting his or her parcel, alters the authorized duration of a rental term, or specifies or limits the number of times that a parcel owner may rent his or her parcel during a specified period, applies only to a parcel owner who consents, individually or through a representative, to the amendment, and to parcel owners who acquire title to a parcel after the effective date of the amendment.

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

3. Nothing in this paragraph shall affect the amendment restrictions for associations of 15 or fewer parcel owners as provided in s. 720.303(1).

4. For purposes of this paragraph, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity or when beneficial ownership of the parcel does not change. For purposes of this paragraph, the term "affiliated entity" means an entity which controls, is

controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests. For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish the association a document certifying that this paragraph applies, as well as providing any organizational documents for the parcel owner and the affiliated entity that support the representations in the certificate, as requested by the association.

(9) ELECTIONS AND BOARD VACANCIES.—

(c) Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division or filed with a court of competent jurisdiction. Such proceedings that are submitted to mandatory binding arbitration with the division must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the

requirements of the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

Section 20. Subsection (1) of section 720.311, Florida Statutes, is amended to read:

720.311 Dispute resolution.—

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for arbitration or the serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department pursuant to s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(j) and 718.1255, and the rules adopted by the division. In addition, the department shall conduct mandatory binding arbitration of election disputes between a member and an association pursuant to s. 718.1255 and rules adopted by the division. Neither election disputes nor recall disputes are eligible for presuit mediation; these disputes shall be arbitrated by the department or filed in a court of competent jurisdiction. At the conclusion of a ~~the~~ proceeding filed for arbitration with the department, the

department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least $200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

Section 21. Subsection (6) is added to section 720.3075, Florida Statutes, to read:

720.3075 Prohibited clauses in association documents.—

(6) The association may extinguish a discriminatory restriction, as defined in s. 712.065(1), pursuant to s. 712.065.

Section 22. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:

An act relating to community associations; amending s. 514.0015, F.S.; exempting certain property association pools from Department of Health regulations; amending

s. 627.714, F.S.; prohibiting subrogation rights against a condominium association under certain circumstances; creating s. 712.065, F.S.; defining the term "discriminatory restriction"; providing that discriminatory restrictions are unlawful, unenforceable, and declared null and void; providing that certain discriminatory restrictions are extinguished and severed from recorded title transactions; specifying that the recording of certain notices does not reimpose or preserve a discriminatory restriction; providing requirements for a parcel owner to remove a discriminatory restriction from a covenant or restriction; amending s. 718.111, F.S.; requiring that certain records be maintained for a specified time; requiring associations to maintain official records in a specified manner; requiring an association to provide a checklist or affidavit relating to certain records to certain persons; providing a timeframe for maintaining such checklist and affidavit; creating a rebuttable presumption; prohibiting an association from requiring certain actions relating to the inspection of records; revising requirements relating to the posting of digital copies of certain documents by certain condominium associations; conforming cross-references;

amending s. 718.112, F.S.; authorizing condominium associations to extinguish discriminatory restrictions; specifying that only board service that occurs on or after a specified date may be used for calculating a board member's term limit; providing requirements for certain notices; revising the fees an association may charge for transfers; conforming provisions to changes made by the act; deleting a prohibition against employing or contracting with certain service providers; amending s. 718.113, F.S.; defining the terms "natural gas fuel" and "natural gas fuel vehicle"; revising legislative findings; revising requirements for electric vehicle charging stations; providing requirements for the installation of natural gas fuel stations on property governed by condominium associations; amending s. 718.1255, F.S.; authorizing parties to initiate presuit mediation under certain circumstances; specifying when arbitration is binding on the parties; providing requirements for presuit mediation; amending s. 718.117, F.S.; conforming provisions to changes made by the act; amending s. 718.121, F.S.; providing when the installation of a natural gas fuel station may be the basis of a lien; amending s. 718.202, F.S.; revising how developers may use certain withdrawn escrow funds; amending s.

718.303, F.S.; revising requirements for certain actions for failure to comply with specified provisions; revising requirements for certain fines; amending s. 718.501, F.S.; defining the term "financial issue"; authorizing the Division of Condominiums, Timeshares, and Mobile Homes to adopt rules; amending s. 718.5014, F.S.; revising where the principal office of the Office of the Condominium Ombudsman must be maintained; amending s. 719.103, F.S.; revising the definition of the term "unit" to specify that an interest in a cooperative unit is an interest in real property; amending s. 719.104, F.S.; prohibiting an association from requiring certain actions relating to the inspection of records; making technical changes; amending s. 719.106, F.S.; revising provisions relating to a quorum and voting rights for members remotely participating in meetings; amending procedure to challenge a board member recall; conforming provisions to changes made by the act; authorizing cooperative associations to extinguish discriminatory restrictions; amending s. 720.303, F.S.; authorizing an association to adopt procedures for electronic meeting notices; revising the documents that constitute the official records of an association; revising when a specified statement must

be included in an association's financial report for the preceding fiscal year; revising requirements for such statement; revising when an association is deemed to have provided for reserve accounts; amending procedure to challenge a board member recall; amending s. 720.305, F.S.; providing requirements for certain fines; amending s. 720.306, F.S.; revising requirements for providing certain notices; providing limitations on associations when a parcel owner attempts to rent or lease his or her parcel; amending the procedure for election disputes; amending s. 720.311, F.S.; amending procedure for election disputes; amending s. 720.3075, F.S.; authorizing homeowners' associations to extinguish discriminatory restrictions; providing an effective date.

COMMERCE COMMITTEE

HB 623 by Rep. Shoaf
Community Associations

AMENDMENT SUMMARY
February 27, 2020

Amendment to amendment 1 by Rep. LaRosa (line 1656):
The amendment to the amendment:

- Provides that an owner in a homeowner's association may display another state's flag, including any U.S. territory or commonwealth, in addition to being able to display the flag of the United States, the State of Florida, a branch of the United States military, or a POW-MIA flag.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative La Rosa offered the following:

Amendment to Amendment (079453) by Representative Shoaf (with title amendment)

Between lines 1656 and 1657 of the amendment, insert:

Section 1. Paragraphs (a) and (b) of subsection (2) of section 720.304, Florida Statutes, are amended to read:

720.304 Right of owners to peaceably assemble; display of flag; SLAPP suits prohibited.—

(2)(a) Any homeowner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than 4 1/2 feet by 6 feet, which represents <u>any state, as defined in s. 624.08, or</u> the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a

POW-MIA flag, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association.

(b) Any homeowner may erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner's real property, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The homeowner may further display in a respectful manner from that flagpole, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, one official United States flag, not larger than 4 1/2 feet by 6 feet, and may additionally display one official flag of the State of Florida<u>, any state, as defined in s. 624.08,</u> or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the county or municipality in which the flagpole is erected and all setback and locational criteria contained in the governing documents.

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

Remove line 1925 of the amendment and insert:
amending s. 720.304, F.S.; regarding display of flags; amending s. 720.305, F.S.; providing requirements for certain

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 723 Peer-to-Peer Car Sharing
SPONSOR(S): Insurance & Banking Subcommittee; Fischer and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 1 N, As CS	Lloyd	Cooper
2) State Affairs Committee	19 Y, 2 N	Roth	Williamson
3) Commerce Committee		Lloyd	Hamon

SUMMARY ANALYSIS

In recent years, the private market, through the Internet and smart phone technology, has allowed the development of new forms of direct person-to-person economic arrangements. Companies have emerged to facilitate the sharing of motor vehicles such that a private passenger vehicle is given over to another individual to operate for a period. This is known as "peer-to-peer car-sharing." These services are different from transportation network companies, like Uber, Sidecar, and Lyft, in that another person takes over possession and control of the motor vehicle from the owner, rather than simply obtaining a ride. There are similar commercial services available where one can rent a car from a business on an hourly basis; these are known as car-sharing services and are similar to but distinct from traditional rental car companies. Unlike transportation network companies and car-sharing services, there are no statutes directly regulating peer-to-peer car-sharing.

The bill establishes statutory requirements for peer-to-peer car-sharing, including liabilities and insurance obligations among participants. The bill:

- Defines the term "peer-to-peer car-sharing" as the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. The term does not include the renting of a motor vehicle through a rental company, the use of a for-hire vehicle, or joint use of motor vehicles, such as ridesharing or carpooling.
- Establishes insurance requirements for each party involved in peer-to-peer car-sharing. During the period that the owner is sharing the car with another driver, the peer-to-peer car-sharing program (e.g., Turo, Drift, and Getaround) is responsible for providing motor vehicle insurance at or above the statutory minimums for private passenger motor vehicles. It coordinates coverage if there are multiple insurance policies involved and depending on the circumstances. If the owner's or driver's policy lapses or is inadequate, the program is responsible for the insurance requirements.
- Allows motor vehicle insurers insuring the shared vehicle owner to exclude coverage for use of the vehicle in car-sharing.
- Provides that the peer-to-peer car-sharing program and vehicle owner are not vicariously liable for the actions and damages of the driver during periods of peer-to-peer car-sharing use.
- Specifies recordkeeping requirements and retention periods.
- Includes requirements for consumer protection notifications.
- Addresses the repair, use, and non-use of motor vehicles under a safety recall notice.
- Provides that the bill does not limit the liability of the peer-to-peer car-sharing program for its acts or omissions that cause bodily harm during peer-to-peer car-sharing; nor, the owner or driver to the peer-to-peer car-sharing program for economic losses due to a breach of contract.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill is effective March 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In recent years, the private market, using the Internet and smart phone technology, has allowed the development of new forms of direct person-to-person economic arrangements. Transportation network companies (TNCs) have organized to allow individuals to earn extra income by sharing rides in their personal cars. Entities like Uber, Lyft, and Sidecar facilitate the connection of individuals seeking rides with those offering rides and manage payment transactions for the service. Because of questions over safety, regulations, and insurance considerations, the Legislature passed CS/HB 221[1] in 2017 to preempt local regulations and establish statutory requirements for TNCs, including defining insurance liabilities and standards.

In a manner similar to TNCs, new companies have emerged to facilitate the sharing of motor vehicles such that a private passenger vehicle is provided to another individual to operate for a period. This is known as peer-to-peer car-sharing.

Currently, there are three motor vehicle rental or sharing models available. They are motor vehicle rental companies, car-sharing services, and peer-to-peer car-sharing programs. Motor vehicle rental companies and car-sharing services[2] are regulated by statute; however, there are no statutes specifically regulating the standards and requirements applicable to peer-to-peer car-sharing.

For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the state qualifies the vehicle as a "for-hire vehicle." Specifically, s. 320.01(15)(a), F.S., provides:

> "For-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."

Renting a Motor Vehicle to Another

Current law establishes the requirements for a person (including natural persons and businesses) who wishes to rent a motor vehicle to another.[3] These include requiring: inspection of the driver license of the person to whom the vehicle is to be rented; and, comparing and verifying the signature thereon with the signature of such person written in his or her presence before the vehicle can be rented. Further, a record must be kept of the registration number of the motor vehicle rented, the name and address of the person renting, and the number, date, and place of issue.

---

[1] Ch. 2017-12, Laws of Fla.
[2] S. 212.0606, F.S.
[3] S. 322.38, F.S.,

Car-Sharing Service

For the purposes of defining the applicability of the rental car surcharge[4] authorized by s. 212.0606, F.S., a "car-sharing service" is a membership-based organization or business that requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.

The car rental surcharge applicable to car-sharing services does not apply to the lease, rental, or usage of a motor vehicle from a location-owned, operated, or leased by or for the benefit of an airport or airport authority.[5]

Peer-to-Peer Car-sharing

In peer-to-peer car-sharing, owners interested in sharing their vehicles can register as a host on a peer-to-peer car-sharing site.[6] Sites require photos of the car and help the owner determine a fee based on the location and type of vehicle. The host then specifies the vehicle's availability. The host may choose to have the vehicle picked up at his or her house, deliver the vehicle, or have it picked up at another location, such as an airport. Hosts typically receive between 65 and 75 percent of fees collected on their behalf by the site from the guest. Payments are typically made to the owner through direct deposit.[7] The site provides the recordkeeping necessary to the transaction and in compliance with requirements of law.

Guests also register with the peer-to-peer car-sharing site. The site will conduct a background check and look at the guests' driving records before approving them. The process involves choosing an available vehicle, reserving a date and time, and providing credit card information, if it is not already on file. At the end of the sharing period, the driver replaces any consumed fuel before returning the vehicle to its pickup location.[8]

One peer-to-peer car-sharing website, Turo.com, reports that its company has users in 56 countries in over 5,500 cities across the world. It also has over 850 makes and models of vehicles and offers up to $1 million in liability insurance.[9] The average host earns $500 per month. Hosts with three or more vehicles average over $3,000 per month.[10]

---

[4] A rental car surcharge of $2.00 per day for each day of the first 30 days of a car rental and $1.00 per day for a car sharing service, if the rental by the service is less than 24 hours, is required to be collected and paid to the state. S. 212.0606, F.S.
[5] S. 212.0606(2), F.S.
[6] Turo, Getaround, and Avail are examples of car sharing websites/applications.
[7] Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car Sharing*, Autotrader, (Feb. 2015), https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961 (last visited Jan. 25, 2020).
[8] *Id.*
[9] Turo, *About Turo*, https://turo.com/en-us/about (last visited Jan. 25, 2020).
[10] *Id.*

Documentation Required for Operation of a Vehicle

Section 320.0605(1), F.S., requires that at all times while a vehicle is being used or operated on the roads of Florida, the operator of the vehicle must be in the possession of:

- The registration certificate or an official copy;
- A true copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period;
- A temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet; or
- A cab card issued for a vehicle registered under the International Registration Plan.

The certificate or document must be shown upon demand of any authorized law enforcement officer or agent of the Department of Highway Safety and Motor Vehicles (DHSMV), except for a registered fleet vehicle.[11] This provision does not apply during the first 30 days after purchase of a replacement vehicle. A violation is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S.[12]

Section 320.0605(2), F.S., specifies that for a vehicle rented from a motor vehicle rental company, the rental or lease documentation must include:

- Date of rental and time of exit from rental facility;
- Rental station identification;
- Rental agreement number;
- Rental vehicle identification number;
- Rental vehicle license plate number and state of registration;
- Vehicle's make, model, and color;
- Vehicle's mileage; and
- Authorized renter's name.

Effect of the Bill

The bill creates a new section of the Florida Insurance Code[13] providing requirements for "peer-to-peer car-sharing," also called "car-sharing" in the bill. Peer-to-peer car-sharing is the authorized use of a shared vehicle (vehicle or car) through a peer-to-peer car-sharing program (program) by an individual, the shared vehicle driver (driver), who is not the shared vehicle owner (owner).

"Peer-to-peer car-sharing" does not include the renting of a motor vehicle through a rental company, the use of a for-hire vehicle, or joint use of motor vehicles, such as ridesharing or carpooling. The bill defines the term "peer-to-peer car-sharing program" (program) as a business platform that enables peer-to-peer car-sharing by connecting motor vehicle owners with drivers for financial consideration. It does not include a rental car company, taxi cab association, the owner of a for-hire vehicle, or a car-sharing service.[14]

[11] A fleet vehicle registered under s. 320.0657, F.S., provides for the permanent registration of fleet license plates.
[12] Chapter 318, F.S., relates to the disposition of traffic infractions.
[13] The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.
[14] A "for-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire." S. 320.01(15), F.S.

Peer-to-Peer Car-Sharing Insurance Requirements

The bill requires the program to ensure that, during each car-sharing period, the owner and driver of the vehicle have the following minimum coverage for motor vehicle insurance, which are the current statutory minimums required for private passenger motor vehicles, during peer-to-peer car-sharing periods:

- Property damage coverage of at least $10,000;
- Bodily injury coverage of at least $10,000 for injury to one person and $20,000 for injury to two or more persons;
- Personal injury protection of $10,000; and
- Uninsured/underinsured motorist coverage, as required by s. 627.727, F.S.[15]

The program must also ensure that the insurance policy either recognizes the use of the vehicle in peer-to-peer car-sharing or does not exclude shared use. Compliant insurance coverage may be maintained by the vehicle owner, driver, the program, or any combination thereof, which will be the primary insurance coverage during periods the vehicle is shared. If the owner's or driver's insurance lapses or does not provide the required coverage, the program's coverage must provide coverage as if it were primary from day one, i.e., provide coverage from the first dollar claimed. Further, the program's coverage must not require that a claim be denied by another insurer. The program is authorized to maintain multiple insurance policies to meet its obligations.[16]

Liabilities and Exclusions

If it is determined that the vehicle owner was in control[17] of the vehicle at the time of a loss, the owner must indemnify the program to the extent of the insurer's obligation.

During shared periods, the program assumes the liability of the vehicle owner for bodily injury and property damage to third parties, uninsured/underinsured motorists, and personal injury protection coverages in the amount specified in the car-sharing agreement, which must meet statutory minimums. This shifting of liability is void if the owner makes an intentional or fraudulent material misrepresentation or omission to the program before the sharing period when the loss occurred or if the owner acts in concert with a vehicle driver who fails to return the vehicle as provided in the peer-to-peer car-sharing agreement.

If a dispute exists about who was in control of a vehicle at the time of a loss and the program does not have, did not retain, or fails to provide specific required information, the program will have primary liability for a claim.

If the owner's insurer defends or indemnifies a claim related to a vehicle that it has excluded from coverage and for which it is not liable under the bill, the owner's insurer is entitled to contribution from the program's insurer under certain conditions.

[15] While uninsured/underinsured motorist coverage is required to be offered to every purchaser of motor vehicle insurance in this state, the purchaser may reject such coverage in writing. S. 627.727(1), F.S. Therefore, such insurance is elective.

[16] The program has an insurable interest in the shared vehicle. Also, it may meet its insurance obligations by purchasing insurance from an admitted insurer, which means claims are backed by the Florida Insurance Guaranty Association, in the event the insurer becomes insolvent, or the insurance may be purchased from an authorized surplus lines company, provided the company carries a minimum rating specified by the bill.

[17] *See* Section III.C. Drafting Issues or Other Comments.

Exemption from Vicarious Liability

The program and the shared vehicle owner are exempted from vicarious liability under any local or state law that imposes liability based on vehicle ownership.[18] This means that the actions and liabilities of the driver cannot be imputed to be those of the program or the vehicle owner.

Motor Vehicle Insurance Policy Exclusions

The bill specifies that a motor vehicle insurer may exclude coverage and the duty to defend or indemnify any claim under an owner's policy, including, but not limited to, all types of motor vehicle coverage. The bill provides current insurance policies approved for use in Florida that exclude coverage of vehicles offered for rent, sharing, or hire or for any business use are not invalidated or limited.

Notification Regarding Liens

If the vehicle has a lien against it at the time it is registered for use within the program, the program must notify the owner that using the vehicle for car-sharing may violate the terms of the contract with the lienholder.

Required Recordkeeping

The program must collect and verify records regarding vehicle use, including the times used, fees paid by the driver, and revenues received by the owner. These records must be retained for at least the duration of the statute of limitations for personal injuries and provided on request to the vehicle owner, the owner's insurer, or the vehicle driver's insurer. The program must also keep the following records:[19]

- The name and address of the driver;
- The driver license number of the driver and each other person, if any, who will operate the vehicle; and
- The place of issuance of the driver license.

Consumer Protections

The peer-to-peer car-sharing agreement must include the following disclosures to the owner and driver:

- Any right of the program to seek indemnification from either the owner or driver for economic losses due to a breach of contract;
- A motor vehicle insurance policy issued to the owner for the vehicle or to the driver does not provide a defense or indemnification for any claim asserted by the program;
- The program's insurance is only in effect during the sharing period;
- If the driver uses the vehicle beyond the agreed termination time, the owner and driver may not have insurance coverage;
- The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the owner or the driver;
- The vehicle owner's motor vehicle liability insurance may exclude coverage for a vehicle;

[18] The bill references the federal Graves Amendment, 49 U.S.C. 30106 (2005). The Graves Amendment provides that the owner of a motor vehicle who engages in the business of renting or leasing vehicles and has not been negligent or committed a crime is not liable for the damages caused by a renter/lessee during the rental or lease period merely based on being the owner of the rented or leased vehicle. The Graves Amendment defines owner as a person who is—

(A) a record or beneficial owner, holder of title, lessor, or lessee of a motor vehicle;

(B) entitled to the use and possession of a motor vehicle subject to a security interest in another person; or

(C) a lessor, lessee, or a bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles, having the use or possession thereof, under a lease, bailment, or otherwise.

[19] *See* Section III.C. Drafting Issues or Other Comments.

- An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries; and
- Any conditions under which a vehicle driver must maintain a personal motor vehicle insurance policy with certain coverage on a primary basis in order to book a vehicle.

The program may not enter into an agreement with a driver, unless the driver:

- Holds a Florida driver license of the type required for the class of vehicle shared;
- Holds a driver license issued by the driver's state or country of the type required for the class of vehicle and the driver is the minimum age to operate a vehicle in Florida; or
- Is specifically authorized by DHSMV to drive vehicles of the class shared.

The program is solely responsible for program equipment installed in or on the vehicle for the purposes of allowing use of the vehicle in car-sharing through the program. The program must indemnify the owner for any damage to or theft of such equipment during share periods that is not caused by the owner; the program may seek indemnification from the driver for such damage.

Motor Vehicle Safety Recalls

The program must verify the recall and repair status of the vehicle when it is registered for use with the program. The owner must be notified by the program that: vehicles under recall cannot be shared until repaired; if the owner receives a recall notice while the vehicle is available for sharing, the vehicle must be removed from sharing as soon as practicable; and, if the vehicle is in the possession of a driver, the owner must notify the program as soon as practicable so that it can be repaired.[20]

Construction

The bill specifically provides that it does not limit the liability of the program for acts and omissions by the program that cause bodily harm to a person as a result of peer-to-peer car-sharing. It also provides that it does not limit the program's right to contract for indemnification from owners or drivers for economic losses due to a breach of contract.

B. SECTION DIRECTORY:

Section 1. Creates s. 627.7483, F.S., relating to peer-to-peer car sharing; insurance requirements.

Section 2. Provides an effective date of March 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None known.

2. Expenditures:

   None known.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None known.

[20] *Id.*

2. Expenditures:

None known.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Providing specific requirements and delineating insurance obligations and liabilities of the various parties to a peer-to-peer car-sharing agreement may increase economic activity and avoid litigation over the scope of each party's liability.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill defines a "shared vehicle owner" as the registered owner, or a natural person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. The bill uses the term "shared vehicle owner" exclusively in the context of the role of the registered owner of the motor vehicle. It does not provide a separate context for when an individual or entity designated by the owner would act on behalf of the owner or limit the liability of designated person or entity to only the liabilities that could arise from their actions performed in the interest of the owner. Therefore, all responsibilities, obligations, and liabilities that the bill places on the owner are shared by the designee, without limitation. This may create a situation where a person is designated only to facilitate delivery or return of a vehicle and they become liable for all of the owner's insurance obligations with respect to the vehicle and the program.

The bill requires the peer-to-peer car-sharing program to ensure that the owner and driver of a vehicle have uninsured/underinsured motorist coverage as required by law. The uninsured/underinsured motorist coverage statute is elective. However, on lines 175-182, the bill shifts liability for specified coverages from the owner to the program, including liability to uninsured/underinsured motorists. This language implies that the program is required to provide uninsured/underinsured motorist coverage meeting or exceeding statutory minimums. It is unclear if the intent of the bill is to require uninsured/underinsured motorist coverage, despite its elective status or to allow the program to accept arrangements and be free from liability where the owner and or the driver have rejected uninsured/underinsured motorist coverage.

The bill provides that the "car-sharing termination time" is when agreed use time ends and the vehicle is returned to the agreed upon location, the vehicle is returned to an alternate agreed upon location, or

the vehicle owner takes *possession and control* of the vehicle. In three instances, the bill provides for limitations or liabilities when the vehicle owner is in control of the vehicle. It is unclear if references to "in control" and "in possession and control" are intended to have the same meaning. Further, it is unclear if the term "in control" refers to an individual actively operating the vehicle or if it means the general responsibility for a vehicle by means of being able to exclude others from its use without permission. Since a clear understanding of this term is needed to understand the extent of liability shifting between the owner and the program, the use of the term may need to be clarified.

On lines 289-291, the bill requires designation of personnel capable of fielding calls for roadside assistance and other customer service inquiries. It is not clear to whom the term "personnel" refers to for this purpose or who will designate them.

On lines 313-318, the bill specifies certain records that the program must keep. This occurs in a section titled "Consumer Protections" rather than in an earlier section titled "Recordkeeping." The bill requires the retention of a non-exclusive list of specified records for a designated period. It is unclear if listing additional recordkeeping requirements in another portion of the bill is subject to the same retention period. It may avoid confusion to list all recordkeeping requirements in a single section of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Insurance & Banking Subcommittee considered the bill, adopted two amendments, and reported the bill favorably as a committee substitute. The amendments clarified the term "person" is a "natural person," for purposes of designating someone to act on behalf of a vehicle owner, and replaced the term "network" where context indicated that the term should be "peer-to-peer car-sharing program."

The staff analysis reflects the committee substitute.

A bill to be entitled

An act relating to peer-to-peer car sharing; creating s. 627.7483, F.S.; providing definitions; providing motor vehicle insurance requirements for peer-to-peer car sharing; providing that peer-to-peer car-sharing programs have an insurable interest in shared vehicles in specified periods; authorizing peer-to-peer car-sharing programs to own and maintain certain policies of motor vehicle insurance; providing liabilities under certain circumstances; providing applicability; requiring shared vehicle owners' insurers to indemnify networks under certain circumstances; providing exemptions from vicarious liabilities; authorizing motor vehicle insurance policies to exclude specified coverages under certain circumstances; authorizing specified insurers to seek contributions against indemnifications under certain circumstances; providing requirements for notifications of implications of liens; providing requirements for recordkeeping; requiring specified disclosures to shared vehicle drivers and owners; requiring driver license verification and data retention under certain circumstances; providing responsibilities and indemnifications for specified equipment; providing requirements for verification and notification

relating to motor vehicle safety recalls; providing construction; providing an effective date.

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

Section 1. Section 627.7483, Florida Statutes, is created to read:

627.7483 Peer-to-peer car sharing; insurance requirements.—

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

(a) "Car-sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.

(b) "Car-sharing period" means the period of time that commences either at the car-sharing delivery period or, if there is no car-sharing delivery period, at the car-sharing start time and that ends at the car-sharing termination time.

(c) "Car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which time occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car-sharing program.

(d) "Car-sharing termination time" means the earliest of the following events:

1. The expiration of the agreed-upon period of time established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car-sharing program agreement;

2. The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car-sharing program; or

3. The time the shared vehicle owner takes possession and control of the shared vehicle.

(e) "Peer-to-peer car sharing" or "car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include the renting of a motor vehicle through a rental car company, the use of a for-hire vehicle as defined in s. 320.01(15), ridesharing as defined in s. 341.031(9), carpool as defined in s. 450.28(3), or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(2).

(f) "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. For the purposes of this section, the term does not include a rental car company, a car-sharing service as defined in s.

212.0606(2), a taxicab association, or the owner of a for-hire vehicle as defined in s. 320.01(15).

(g) "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental agreement or an agreement for a for-hire vehicle as defined in s. 320.01(15) or for a car-sharing service as defined in s. 212.0606(2).

(h) "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental car, a for-hire vehicle as defined in s. 320.01(15), or a motor vehicle used for ridesharing as defined in s. 341.031(9), for carpool as defined in s. 450.28(3), or for car-sharing service as defined in s. 212.0606(2).

(i) "Shared vehicle driver" means an individual who has been authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.

(j) "Shared vehicle owner" means the registered owner, or a natural person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. For the

purposes of this section, the term does not include an owner of a for-hire vehicle as defined in s. 320.01(15).

(2) INSURANCE COVERAGE REQUIREMENTS.—

(a)1. A peer-to-peer car-sharing program shall ensure that, during each car-sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle insurance policy that provides all of the following:

a. Property damage liability coverage that meets the minimum coverage amounts required under s. 324.022.

b. Bodily injury liability coverage limits as described in s. 324.021(7)(a) and (b).

c. Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736.

d. Uninsured and underinsured vehicle coverage as required under s. 627.727.

2. The peer-to-peer car-sharing program shall also ensure that the motor vehicle insurance policy under subparagraph 1.:

a. Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car-sharing program; or

b. Does not exclude the use of a shared vehicle by a shared vehicle driver.

(b)1. The insurance described under paragraph (a) may be satisfied by a motor vehicle insurance policy maintained by:

a. A shared vehicle owner;

b. A shared vehicle driver;

c. A peer-to-peer car-sharing program; or

d. A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

2. The insurance policy maintained in subparagraph 1. which satisfies the insurance requirements under paragraph (a) is primary during each car-sharing period.

3.a. If the insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subparagraph 1. has lapsed or does not provide the coverage required under paragraph (a), the insurance maintained by the peer-to-peer car-sharing program must provide the coverage required under paragraph (a), beginning with the first dollar of a claim, and must defend such claim, except under circumstances as set forth in subparagraph (3)(a)2.

b. Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program must not be dependent on another motor vehicle insurer first denying a claim, and another motor vehicle insurance policy is not required to first deny a claim.

c. Notwithstanding any other law, statute, rule, or regulation to the contrary, a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during the car-sharing period. This sub-subparagraph does not create liability for a peer-to-peer car-sharing program for maintaining the

coverage required under paragraph (a) and under this paragraph, if applicable.

d. A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance which provide coverage for:

(I) Liabilities assumed by the peer-to-peer car-sharing program under a peer-to-peer car-sharing program agreement;

(II) Liability of the shared vehicle owner;

(III) Liability of the shared vehicle driver;

(IV) Damage or loss to the shared motor vehicle; or

(V) Damage, loss, or injury to persons or property to satisfy the personal injury protection and uninsured and underinsured motorist coverage requirements of this section.

e. Insurance required under paragraph (a), when maintained by a peer-to-peer car-sharing program, may be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the office. A peer-to-peer car-sharing program is not transacting in insurance when it maintains the insurance required under this section.

(3) LIABILITIES AND INSURANCE EXCLUSIONS.—

(a) Liability.—

1. A peer-to-peer car-sharing program shall assume

liability, except as provided in subparagraph 2., of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car-sharing period in an amount stated in the peer-to-peer car-sharing program agreement, which amount may not be less than those set forth in ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736, respectively.

2. The assumption of liability under subparagraph 1. does not apply if a shared vehicle owner:

a. Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the car-sharing period in which the loss occurs; or

b. Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer-to-peer car-sharing program agreement.

3. A peer-to-peer car-sharing program shall assume primary liability for a claim when it is in whole or in part providing the insurance required under paragraph (2)(a) and:

a. A dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and

b. The peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the information required under subsection (5).

The shared vehicle owner's insurer shall indemnify the peer-to-peer car-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy if it is determined that the shared vehicle owner was in control of the shared motor vehicle at the time of the loss.

(b) Vicarious liability.—A peer-to-peer car-sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. s. 30106 (2005) under any state or local law that imposes liability solely based on vehicle ownership.

(c) Exclusions in motor vehicle insurance policies.—An authorized insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage;

2. Personal injury protection coverage;

3. Uninsured and underinsured motorist coverage;

4. Medical payments coverage;

5. Comprehensive physical damage coverage; and

6. Collision physical damage coverage.

This paragraph does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, sharing, or hire or for any business use.

(d) Contribution against indemnification.—A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program if the claim is:

1. Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car-sharing period; and

2. Excluded under the terms of its policy.

(4) NOTIFICATION OF IMPLICATIONS OF LIEN.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including the use without physical damage coverage, may violate the terms of the contract with the lienholder.

(5) RECORDKEEPING.—A peer-to-peer car-sharing program shall:

(a) Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner.

(b) Retain the records in paragraph (a) for a time period not less than the applicable personal injury statute of limitations.

(c) Provide the information contained in the records in paragraph (a) upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

(6) CONSUMER PROTECTIONS.—

(a) Disclosures.—Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

1. Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

2. That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for

any claim asserted by the peer-to-peer car-sharing program.

3. That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage.

4. The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

5. That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle.

6. An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries.

7. Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

(b) Driver license verification and data retention.—

1. A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

a. Holds a driver license issued under chapter 322 which

authorizes the driver to drive vehicles of the class of the shared vehicle;

b. Is a nonresident who:

(I) Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(II) Is at least the same age as that required of a resident to drive; or

c. Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the shared vehicle.

2. A peer-to-peer car-sharing program shall keep a record of:

a. The name and address of the shared vehicle driver;

b. The number of the driver license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

c. The place of issuance of the driver license.

(c) Responsibility for equipment.—A peer-to-peer car-sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program shall indemnify and hold harmless the shared vehicle owner for any damage to or theft of

such equipment during the car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs during the car-sharing period.

(d) Motor vehicle safety recalls.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

1. Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

2. Notify the shared vehicle owner that if the shared vehicle owner:

a. Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a shared vehicle on the peer-to-peer car-sharing program until the safety recall repair has been made.

b. Receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, he or she shall remove the shared vehicle as available on the peer-to-peer car-sharing program as soon as practicably possible after receiving the

notice of the safety recall and until the safety recall repair has been made.

c. Receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, he or she shall notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall, so that he or she may address the safety recall repair.

(7) CONSTRUCTION.—This section does not limit:

(a) The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in the bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or

(b) The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Section 2. This act shall take effect March 1, 2021.

COMMERCE COMMITTEE

CS/HB 723 by Rep. Fischer
Peer-to-Peer Car Sharing

AMENDMENT SUMMARY
February 27, 2020

Amendment 1 by Rep. Fischer (Line 76): The amendment clarifies that the bill does not apply to someone that is using hardware or software that might otherwise be considered a peer-to-peer car-sharing program, if it is not used to pay for use of a shared vehicle.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Fischer offered the following:

Amendment

Remove lines 76-77 and insert:

212.0606(2), a taxicab association, the owner of a for-hire vehicle as defined in s. 320.01(15), or a service provider who is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for use of a shared vehicle.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 771 Motor Vehicle Insurance
SPONSOR(S): Grall
TIED BILLS: **IDEN./SIM. BILLS:** SB 378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 1 N	Lloyd	Cooper
2) Government Operations & Technology Appropriations Subcommittee	8 Y, 4 N	Helpling	Topp
3) Commerce Committee		Lloyd	Hamon

SUMMARY ANALYSIS

The Florida Motor Vehicle No-Fault Law (also known as personal injury protection or PIP) requires owners and operators to obtain and maintain PIP, which provides $10,000 in medical, disability, and funeral expenses, without regard to fault, subject to a limit of $2,500 for non-emergency medical care. In exchange for providing PIP coverage, vehicle owners and operators are immune from tort claims within the limits of the PIP law.

The owner is also required to obtain and maintain coverage of at least $10,000 for property damage (PD). In response to an accident, they must also provide proof of bodily injury (BI) coverage. BI coverage requires the ability to respond for at least $10,000 in damages due to the bodily injury or death of any one person and $20,000 for bodily injury or death to two or more persons. An insurance policy or allowable form of self-insurance is acceptable proof of BI coverage.

The bill repeals PIP. By repealing PIP, the bill removes the limitation on tort liability provided under PIP. When drivers are at fault in an accident, they are fully liable for any damages they cause. Due to this change, the bill expands the scope of legal liabilities covered under an uninsured/underinsured motorist policy.

In place of PIP, BI coverage is required at the time of registration of a motor vehicle. It increases the minimum BI coverage limits to $25,000 in damages due to the bodily injury or death of any one person and $50,000 for bodily injury or death to two or more persons. The minimum PD coverage limit is not changed. The minimum security limits for self-insurance of BI and PD requirements are increased. The bill also increases minimum coverage limits applicable to garage liability policies and commercial motor vehicle coverage.

The bill requires insurers to offer medical payments coverage prior to issuing the policy, which the prospective insured may reject in writing. Coverage may be selected at $5,000, $10,000 or in amounts exceeding $5,000. The insurer may offer deductibles from zero to $500.

Motor vehicle policies issued on or after January 1, 2021, may not include PIP coverage. The bill provides for continued enforcement of suspensions, revocations, and anti-fraud measures for actions occurring under the PIP law.

The bill provides for the transition of motor vehicle insurance policies issued prior to January 1, 2021, from PIP requirements to BI requirements. In addition, insurers are required to provide their policyholders a notice describing the effect of the elimination of PIP and change to BI, by September 1, 2020. The notice is subject to approval by the Office of Insurance Regulation (OIR).

The bill provides that resident relatives must be included in coverage provided by motor vehicle liability policies. It also allows insurers to exclude named individuals from coverage. It also allows exclusion of coverage of motor vehicles that are not identified on the policy, if an individual insured by the policy has owned the vehicle, or the temporary vehicle was furnished for regular use, for more than 30 consecutive days.

An appropriation of $83,651 is provided to OIR to implement changes made by the bill. The bill has an indeterminate negative fiscal impact on state revenues and expenditures and no fiscal impact on local government. The bill has indeterminate positive and negative impacts on the private sector.

The bill is effective January 1, 2020, except as otherwise expressly provided by the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Financial Responsibility Law

Florida's Financial Responsibility Law requires proof of ability to pay monetary damages for bodily injury (BI) and property damage (PD) liability arising out of a motor vehicle accident or serious traffic violation.[1] The owner or operator of a motor vehicle is not required to provide proof of BI coverage at the time of vehicle registration. Motorcycle owners also are not required to provide proof of BI coverage at the time of registration. Proof of such coverage is only required after an accident.[2] At that time, a driver proves financial responsibility by furnishing an active motor vehicle liability policy, a certificate showing a qualifying security deposit with the Department of Highway Safety and Motor Vehicles (DHSMV), or proof of qualifying self-insurance.[3]

The required minimum amounts of BI insurance coverages are $10,000, in the event of bodily injury to, or death of, one person, and $20,000, in the event of bodily injury to, or death of, two or more persons. The required minimum amount of PD insurance coverage is $10,000, in the event of damage to property of others, or $30,000 combined for both BI and PD coverage.[4] Some refer to these coverage amounts in a summary manner, i.e., $10,000/$20,000/$10,000 or 10/20/10.

A driver's license and vehicle registration are subject to suspension for failure to comply with the PD coverage requirement.[5] One may obtain driver's license and registration reinstatement by obtaining a liability policy and by paying a fee to DHSMV.[6]

Financial responsibility requirements are common. All states have financial responsibility laws that require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. The minimum coverage amounts vary among the states.

Florida Motor Vehicle No-Fault Law

Florida's Motor Vehicle No-Fault Law (No-Fault Law)[7] requires motorists to carry no-fault insurance known as personal injury protection (PIP) coverage. The purpose of PIP coverage under the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to who is responsible for a motor vehicle accident. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry $10,000 of PIP coverage.[8] However, motorcycles are excluded from this requirement.

---

[1] Ch. 324, F.S.

[2] Ss. 320.02 and 324.011, F.S.

[3] Ss. 324.031, 324.061, 324.161, and 324.171, F.S. Businesses that choose to self-insure the financial responsibility requirements must deposit $30,000 per vehicle, up to a maximum of $120,000, with the DHSMV and maintain excess insurance with limits of $125,000/$250,000/$300,000. Individuals that choose to self-insure must deposit $30,000 with the DHSMV. Individuals and businesses can also obtain a certificate of self-insurance to satisfy the financial responsibility requirements. Individuals must have an unencumbered net worth of $40,000 and businesses must have either an unencumbered net worth of $40,000 for the first vehicle and $20,000 for each additional vehicle or a sufficient net worth determined by the DHSMV by rule. Currently, the applicable rule provides that $40,000 for the first vehicle and an amount less than $20,000 for each additional vehicle is sufficient if the applicant carries excess insurance in the amounts of $25,000/$50,000/$100,000. The amount applicable to each additional vehicle is determined annually under a "Manual of Financial Responsibility Rates" (Revised 05-89) adopted by rule by the Office of Insurance Regulation. Rule 15A-3.011, F.A.C.

[4] S. 324.022, F.S.

[5] S. 324.0221(2), F.S. Failure to maintain PIP coverage results in suspension of the driver's license and vehicle registration.

[6] S. 324.0221(3), F.S.

[7] Ss. 627.730-627.7405, F.S.

[8] S. 627.7275, F.S. Under Florida's Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for Bodily Injury and Property Damage liability at the time of motor vehicle accidents or when serious traffic violations occur. The Financial Responsibility Law requires $10,000, per person, and $20,000, per incident, of Bodily Injury coverage, and $10,000 of Property Damage liability coverage.

PIP General Provisions

Required Coverage	All owners or registrants of motor vehicles with four or more wheels, except school buses, limos, and taxicabs, are required to carry PIP.[9]
Individuals Covered	The named insured, relatives living in the same household, persons operating the vehicle, passengers in the vehicle, and persons struck and injured while not occupying the vehicle.
Tort Limitation	Limited exemption from tort liability; injured persons may pursue certain tort claims as specified by the PIP law.
Benefits	$10,000 in emergency medical and disability benefits (limited to $2,500 in medical benefits for non-emergency medical conditions) and $5,000 in death benefits. Coverage of 60 percent of lost income due to disability, not to exceed the $10,000 overall benefit limitation.
Timely Treatment	Medical benefits are paid only if initial treatment is received within 14 days of the accident.
Timely Payment	Payments are overdue if not paid within 30 days of insurer receipt of written notice.
Medical Reimbursement	80 percent of reasonable medical expenses paid to eligible medical providers.[10]
Excluded Treatment	Massage and acupuncture are not PIP medical benefits. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.
Attorney Fees	Prevailing insureds and beneficiaries may receive a reasonable attorney fees award.

PIP in Other States

Over the last couple of decades, 24 jurisdictions have repealed their No-Fault laws or made them non-compulsory.[11] Only 17 jurisdictions have compulsory PIP laws. Of those with compulsory PIP laws, only nine have No-Fault laws. Five jurisdictions, including some that do not have compulsory PIP laws, give the insured the option to choose No-Fault protections.

Jurisdiction	Compulsory PIP	No-Fault
Arizona	Yes	No
Delaware	Yes	No
District of Columbia	No	Optional
Florida	Yes	Yes
Hawaii	Yes	Yes
Kansas	Yes	Yes
Kentucky	No	Optional
Maryland	Yes	No
Massachusetts	Yes	Yes
Michigan	Yes	Yes
Minnesota	Yes	Yes

[9] This includes non-resident owners who keep a vehicle in Florida for more than 90 days during the previous 365 day. S. 627.733(2), F.S.

[10] Insurers may limit reimbursements to a fee schedule tied to the Medicare allowed amount. S. 627.736(5)(a)1., F.S. For many services, 80 percent of 200 percent of the Medicare allowed amount is the standard reimbursement under this fee schedule.

[11] National Association of Insurance Commissioners, *Final Auto Study Group Report* (Nov. 18, 2014) and Insurance Information Institute, *Compulsory Auto/Uninsured Motorists* (Sept. 2017) http://www.iii.org/issue-update/compulsory-auto-uninsured-motorists (last visited Feb. 1, 2020).

New Jersey	Yes	Optional
New York	Yes	Yes
North Dakota	Yes	Yes
Oregon	Yes	No
Pennsylvania	No	Optional
Texas	Yes	Optional
Utah	Yes	Yes
Virgin Islands	Yes	No
Washington	Yes	No

Recent Legislative History

The Legislature revised the PIP law multiple times following a Statewide Grand Jury in 2000 that found rampant fraud in the PIP system. The Legislature enacted PIP reform legislation in 2001 and 2003. The 2003 legislation included a sunset of the PIP law on October 1, 2007. A Governor's veto of a bill extending the sunset of the law resulted in the law expiring in 2007. Following a 2007 Special Session, the PIP law was revived effective January 1, 2008. The Legislature again revised the PIP law in 2012.

PIP Reform

The reforms enacted between 2001 and 2012 included:

- Establishing requirements for and limiting access to motor vehicle crash reports;
- Providing limitations on medical services, reimbursement, and eligible providers;
- Requiring provider licensing;
- Requiring pre-suit demand letters;
- Increasing criminal penalties;
- Defining certain activities by claims handlers as unfair and deceptive trade practices;
- Establishing limitations on benefits for emergency and non-emergency medical conditions; and
- Creating limitations on attorney's fees.

The 2012 reform required insurers to make rate filings by October 1, 2012, and January 1, 2014, that provided a minimum 10 percent and 25 percent decrease in PIP premiums, respectively. However, this reform permitted insurers to file and the Office of Insurance Regulation (OIR) to approve smaller decreases or increases, if appropriately justified. This resulted in an estimated average statewide rate decrease in PIP premiums of 13.2 percent, as of January 22, 2014. This legislation also required OIR to issue a PIP data call and report the results. OIR reported the data call results on January 1, 2015 (see Recent Reports by OIR, below).

PIP Repeal Proposals

The PIP law has been the subject of multiple repeal proposals over the last several years. The House considered bills in 2013, 2014, 2015, and 2017 that would have repealed PIP and required increased BI coverage under the Financial Responsibility Law.[12] A 2016 bill would have repealed PIP, effective January 1, 2019, but would have maintained current BI and PD requirements. Except for 2017, the House bills died in the Insurance & Banking Subcommittee. CS/HB 1063 (2017) passed the House on April 19, 2017, and died in the Senate Appropriations Subcommittee on Health and Human Services.

Recent Changes

As part of a pair of broader insurance related bills, the Legislature amended the PIP law in 2015 and 2016. HB 165 (2015) clarified the application of the PIP medical reimbursement fee schedule. HB 165 (2015) and HB 659 (2016) each created an additional exemption from a licensure requirement under the PIP law that permits reimbursement of certain health care clinics for PIP related medical services.

[12] Ch. 324, F.S.

Recent Reports by OIR

PIP Data Call

The 2012 reform, HB 119, required OIR to perform a comprehensive data call regarding PIP. Thirty-five insurers representing 83.5 percent of the market participated in the data call. This included the top 25 insurers, by market share. The report did not rely on information from several insurers due to data quality issues. OIR published their analysis of the data call on January 1, 2015. The report provided detailed information on seven of the eight required elements mentioned in the bill. The bill required the report to address, at a minimum, the following points:

1. Quantity of personal injury protection claims.
2. Type or nature of claimants.
3. Amount and type of personal injury protection benefits paid and expenses incurred.
4. Type and quantity of, and charges for, medical benefits.
5. Attorney fees related to bringing and defending actions for benefits.
6. Direct earned premiums for personal injury protection coverage, pure loss ratios, pure premiums, and other information related to premiums and losses.
7. Licensed drivers and accidents.
8. Fraud and enforcement.

The published report did not include detail or analysis regarding item 5. However, the report included limited information about insurer costs related to defense of claims, which includes attorney fees. OIR documented and analyzed all other items in detail.

While OIR did not provide a summary of their findings in the body of the report, they summarized their findings in a press release dated January 5, 2015,[13] as follows:

> The findings showed a general decrease in the per claim costs and the overall number of claims (frequency and severity) for PIP since the implementation of HB 119 on January 1, 2013. The regional analysis concludes that South Florida and the Tampa/St. Petersburg regions experienced the most significant decreases in Florida. However, the data also exposed that other coverages, such as Bodily Injury (BI) and Uninsured Motorists (UM), experienced increases in both frequency and severity when some benefits covered under PIP moved to these coverages. These trends are expected to continue over the next year.
>
> Prior to 2012 and the passage of this law, the pervasive nature of PIP fraud and staged auto accidents created an unsustainable cost trajectory of PIP claims. The Division of Insurance Fraud (DIF), within the Department of Financial Services (DFS), is responsible for investigating this type of fraud. According to the DIF, there has been a substantial decline in PIP fraud since the implementation of HB 119 with a projected 16% decrease during Fiscal Year 2013 – 2014 from Fiscal Year 2011 – 2012.
>
> The Office also compiled a summary of the rate filings effective on or after January 1, 2011 for the top 25 insurers representing 80.9% of the total personal auto market in Florida. These filings were segregated into two sets of data: Pre-HB 119 and Post-HB 119 (to include all filings submitted since, and including, the first required HB 119 filing due on October 1, 2012). The average statewide approved rate changes were:

[13] FLORIDA OFFICE OF INSURANCE REGULATION, *News Releases, Office Releases Personal Injury Protection (PIP) Insurance Data Call Report*, http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2094 (last visited Feb. 1, 2020).

	Pre-HB 119	HB 119
PIP	+46.3%	-13.6%
Liability (incl. PIP)	+20.9%	-0.5%
Overall (incl. Comp. & Coll.)	+12.9%	-0.1%

The report noted many insurers had residual rate need due to deteriorating PIP experience prior to the implementation of the bill that were used to offset some of the expected savings from HB 119. For an individual policyholder, the rate changes may vary considerably from the statewide averages listed above, taking into account other factors, such as differences by insurer, by territory, etc.

Overall, there was limited data available to determine the true impact of HB 119; however, the data call analysis reveals the law has had a major impact on the personal auto market and changed the trajectory of trends being seen prior to its enactment.

The report also documented an increase in the frequency of automobile crashes in Florida during 2013 and 2014. Data from the DHSMV shows that this trend continued through 2015. OIR reported that crash frequency per 100 licensed drivers in Florida had dropped by 13.7 percent from 2004 to 2011. In 2011, there were 1.48 crashes per 100 licensed drivers. For 2015, crash frequency increased over 61 percent to 2.40 crashes per 100 licensed drivers.

OIR Cost Projection on Certain PIP Reform Proposals

In June 2016, OIR contracted with Pinnacle Actuarial Resources (Pinnacle) for actuarial services to produce a "Review of PIP Legislation."[14] The objective of the review was to "provide a draft and final report documenting [a] comprehensive study on the effect of HB 119 and the potential impact to Floridians if the personal injury protection coverage requirements were repealed and replaced with varying levels of Bodily Injury coverage, or if the current requirements to purchase auto insurance were completely repealed." Pinnacle is the same vendor that produced the 2012 rate impact analysis that was required by HB 119 (2012).[15]

Pinnacle issued their report on September 13, 2016.[16] They found that:

- The study of HB 119 evaluated sixteen provisions of the bill and concluded that the HB 119 reforms produced an estimated aggregate savings since enactment in PIP claim costs of 17.5 percent and an estimated statewide average savings in PIP premiums of 15.1 percent.
- If no-fault insurance were repealed in Florida, there could be an estimated overall reduction in premiums of 9.6 percent on the *liability coverage package* or $81 per car annually for the average driver. For *all coverages combined*, the estimated premium decrease is 6.7 percent.
- Finally, an analysis of premium impacts if the requirement to purchase auto insurance was repealed in addition to the repeal of no-fault insurance found there could be an estimated additional reduction in the PIP repeal savings of 0.2 percent to 0.4 percent.

Pinnacle also provided estimates that considered the outcome if the consumer purchased Medical Payments (Med Pay) coverage, at either $2,500 or $5,000 coverage limits, and if the BI limit was increased by law to $25K/$50K. The following table illustrates the estimated savings in each scenario.

[14] DFS OIR RFP 15/16-15, *Actuarial Consulting Services for Review of PIP Legislation*.
[15] In 2012, Pinnacle Actuarial Resources, Inc., was retained by OIR to conduct an independent actuarial study to calculate the savings to be expected because of HB 119 (2012). S. 15, HB 119 (2012). OIR published the report on August 21, 2012. FLORIDA OFFICE OF INSURANCE REGULATION, *Press Release*, http://www.floir.com/PressReleases/viewmediarelease.aspx?id=1956 (last visited Feb. 1, 2020).
[16] Pinnacle Actuarial Resources, Inc., *Florida Office of Insurance Regulation: Review of Personal Injury Protection Legislation*, Sept. 13, 2016, *available at* https://www.floir.com/siteDocuments/FLOIRReviewPIP20160913.pdf (last visited Feb. 1, 2020).

Estimated Savings on Auto Insurance Premiums, by Scenario			
Situation	Coverage Type	Require BI at $10K/$20K	Require BI at $25K/$50K
PIP repeal	Liabilities, only[17]	9.6%	8.1%
	Overall	6.7%	5.6%
PIP repeal and $2,500 Med Pay	Liabilities, only	4.9%	3.4%
	Overall	3.4%	2.4%
PIP repeal and $5,000 Med Pay	Liabilities, only	1.0%	-0.5%
	Overall	0.7%	-0.3%

Overview of Colorado PIP Insurance Reform

Colorado had a no-fault auto insurance law from 1974 to 2003. In reaction to increasing costs of auto insurance, including a 38 percent increase in auto premiums from 1992 to 2002, Colorado repealed their no-fault law, effective July 2003. Colorado now handles crash liabilities through the tort system. Under the tort system, the person at fault in an auto crash is responsible for paying the losses of the victim and the victim enforces their rights in civil court.

Prior to the change, Colorado had the ninth highest premium per insured auto in the nation. For 2014 (the most current year available), Colorado had the 21st highest auto premium in the nation. According to the Colorado Legislative Council Staff, auto premiums in the state as of January 2007 had decreased ten to 14 percent following the elimination of the no-fault system.[18]

In comparison, according to data from the National Association of Insurance Commissioners and reported by the Insurance Information Institute, from 2006 through 2014, Florida has consistently ranked fifth in the nation for highest average auto insurance cost per vehicle. Florida ranked as low as sixth in 2009 and 2014 and as high as fourth in 2008 and 2012, with the remaining years being ranked fifth.[19]

	Colorado			Florida		
	Average Auto Premium Cost	National Rank	Percent Change over 2002 Cost	Average Auto Premium Cost	National Rank	Percent Change over 2003 Cost
2002	$921.00	9		n/a	n/a	
2003	$923.00	12		$1,018.00	5	
2004	$850.00	18	-7.7%	$1,062.00	5	4.3%
2005	$829.00	21	-10.0%	$1,064.00	6	4.5%
2006	$785.00	23	-14.8%	$1,069.00	5	5.0%
2007	$738.00	24	-19.9%	$1,043.00	5	2.5%
2008	$728.67	26	-20.9%	$1,054.89	5	3.6%
2009	$741.28	22	-19.5%	$1,006.20	6	-1.2%
2010	$730.42	25	-20.7%	$1,037.36	5	1.9%
2011	$723.61	27	-21.4%	$1,090.58	5	7.1%
2012	$737.95	25	-19.9%	$1,128.53	4	10.9%
2013	$777.95	23	-15.5%	$1,143.73	5	12.4%
2014	$821.19	21	-10.8%	$1,140.84	6	12.1%

[17] "Liabilities, only" includes Bodily Injury, Personal Injury Protection, Uninsured Motorist, and Property Damage coverages.
[18] Colorado Legislative Council, *Issue Brief Number 07-01, Automobile Insurance in Colorado*, Jan. 2007.
[19] INSURANCE INFORMATION INSTITUTE, *Auto Insurance, Costs and Expenditures*, http://www.iii.org/table-archive/21247 (last visited Feb. 1, 2020).

Private Passenger Auto Insurance Requirement Comparison

	Colorado	Florida
No-fault/PIP	None	$10,000 medical, disability and funeral Non-emergency medical limited to $2,500 Mandatory for vehicle registration
Bodily Injury or Death	$25,000 per person, $50,000 per accident Mandatory for vehicle registration	$10,000 per person, $20,000 per accident, or $30,000 single limit Mandatory, may be secured post-registration
Property Damage	$15,000 Mandatory for vehicle registration	$10,000 Mandatory for vehicle registration
Uninsured/Under-insured Motorist	Mandatory offer at BI/PD limits, written rejection required	Mandatory coverage at BI limits, if BI purchased; written rejection required
Medical Payment	$5,000 mandatory offer, written rejection required	Optional

Impacts of the Colorado Reform

In February 2008, the Office of the Governor of Colorado published a report that studied the impacts of the repeal of the no-fault system on auto insurance, health insurance, the trauma system, Medicaid and Colorado Indigent Care Program, and consumers.[20] The report's findings include the following:

AUTO INSURANCE

- For the eight largest auto insurers in Colorado by market share, average auto insurance premiums declined 35 percent from July 2003 to December 2007.
- The average premium decrease attributable to the elimination of PIP was 22 percent immediately following the repeal of no-fault.[21]
- Colorado's national rank for average annual auto insurance premium per vehicle fell following the repeal.
- Premiums for each of the non-PIP auto coverage types increased, except comprehensive coverage (no baseline data was available for medical payment coverage, so the effect was unknown).
- Ninety-nine percent of Colorado auto insurers were offering medical payment coverage post-reform and 31 percent of consumers were purchasing this coverage.

HEALTH INSURANCE

- Based on the responses of health insurers (totaling 1.57 million policyholders) to a 2003 survey by the Colorado Division of Insurance, health insurance premiums increased by an estimated 1.6 percent.

TRAUMA SYSTEM

Hospitals

- The report could not quantify the impact on acute care hospital reimbursements for emergency and outpatient services.
- Comparing payments for 2002 to those for 2006 for inpatient care of auto accident patients at acute care hospitals, the percentage of payments from private insurance, which includes both auto and health insurance, decreased by about one third (75.4 percent for 2002 and 49.3 percent for 2006).

[20] BBC Research & Consulting, *Auto Insurance/Trauma System Study*, 5, Feb. 2008.
[21] Information in *Issue Brief Number 07-01* and the *Auto Insurance/Trauma System Study* are seemingly at odds regarding the change in auto premiums post-reform. The reason for the difference may be that *Issue Brief Number 07-01* is referencing the change in average premiums for Colorado overall at January 2007 and the *Auto Insurance/Trauma System Study* is only focused on the eight largest auto insurers in Colorado at December 2007.

The proportion of payment by all other payer types increased. The greatest increase was in self-payment (13.4 percent in 2002 and 27.2 percent in 2006). Self-payment may also include self-filing of insurance. Medicare showed the next highest increase (2.9 percent in 2002 and 7.7 percent in 2006).
    - A similar pattern was seen in all inpatient cases; however, the amount of the decrease in the proportion of private insurance payments was much less (51.1 percent for 2002 and 46.6 percent for 2006).
- The reimbursement rate (percent of charge reimbursed) for acute care hospital inpatient auto crash patients fell from 60 percent to 36 percent for hospitals that responded to a survey. The report asserted the cause of the reduction to be more patients without insurance and, for patients with insurance, more payments based on negotiated rates (non-PIP insurers allegedly rely more on negotiated rates).

Emergency Medical First Responders

- Based on a small sample of first responders, i.e., those that could provide detailed billing and reimbursement information, non-reimbursed charges increased 37 percent for 2006 over 2002. Governmental first responders indicated that they made up deficits related to lower patient care/transfer reimbursements from non-user sources such as taxes and general fund transfers.
- The average number of days to collect first responder payment on auto crash related cases increased from 74 days in 2002 to 144 days in 2006.

MEDICAID AND COLORADO INDIGENT CARE PROGRAM

- Medicaid – the Medicaid program's exposure to auto crash claims increased, but the report could not quantify the cost.
- Colorado Indigent Care Program – while exposure was increased, caps on the federal and state portions of the program's funding limited increases in expenditures. This increased unreimbursed provider charges.

Effect of the Bill

Effective January 1, 2021, the bill repeals portions of the Florida Motor Vehicle No-Fault Law (PIP). However, it provides for continued enforcement of suspensions,[22] revocations, and anti-fraud measures for actions occurring under the No-Fault Law.

Changes to Financial Responsibility

Beginning January 1, 2021, proof of compliance with the Financial Responsibility Law (BI coverage) is required at the time of registration of a motor vehicle,[23] instead of post-registration or at the time of an accident as is currently required. It increases the minimum BI coverage limits from $10,000 per person and $20,000 per incident to $25,000 per person and $50,000 per incident. The minimum PD coverage limit is not changed.[24] This results in required 25/50/10 coverage in most instances.

The bill increases minimum security limits for self-insurance of financial responsibility requirements in the following ways:

- Certificate of deposit for individuals and businesses:[25]
    - increased from $30,000 per vehicle (max. $120,000) to $60,000 per vehicle (max. $240,000). In addition, such person must maintain motor vehicle liability policy in excess of the certificate of

[22] The bill also expands DHSMV's authority to suspend the registrations and licenses of drivers who fail to maintain BI when required under ss. 324.023 (DUI conviction), 324.032 (for-hire transportation), 627.7415 (commercial motor vehicles), and 627.742, F.S. (non-public sector buses), and who fail to carry proof of BI when operating a motor vehicle.
[23] Proof of compliance with the Financial Responsibility Law does not change for motorcycles.
[24] The allowed combined coverage limit of $30,000 for property damage and bodily injury is increased to $60,000.
[25] Proof of the certificate of deposit maintained in a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration must be submitted annually to DHSMV.

deposit providing bodily injury coverage of $125,000, per person, $250,000, per accident, and $50,000 for property damage, or $300,000, combined property damage and bodily injury.

- Certificate of self-insurance – minimum unencumbered net worth increases from:
  - For individuals – $40,000 to $100,000, and
  - For businesses – $40,000 for the first vehicle and $20,000 for each additional vehicle to $100,000 and $50,000, respectively.[26]

Garage Liability Insurance – The bill increases minimum security limits for garage liability insurance from $25,000 combined single limit for bodily injury and property damage to $60,000 combined.

For-Hire Passenger Transportation Vehicle – no change; current 125/250/50.

Commercial Motor Vehicles – minimum combined bodily injury and property damage coverage:
- For vehicles between 26,000 pounds and 35,000 pounds – increases from $50,000 per occurrence to $60,000 per occurrence,
- For vehicles 35,000 pounds or more but less than 44,000 pounds – no change ($120,000 per occurrence), and
- For vehicles between 44,000 pounds or more – no change ($300,000 per occurrence).

Non-public Sector Buses – no change; current 100/300/50 or combined 300.

Transportation Network Companies – no change; current 50/100/25 when logged on, but no rider, and $1 million when connected to a rider.

Transition of Coverages

The bill provides for the transition of motor vehicle insurance policies into compliance with the changes made by the bill if the policies were issued prior to January 1, 2021, but are in force on that date. Those issued on or after January 1, 2021, are prohibited from including PIP coverage. In force policies that were issued in compliance with law at the time of issuance are deemed to meet the new requirements until renewed, nonrenewed, or canceled. Insurers are required to allow policyholders with PIP coverage to obtain BI coverage that complies with the changes made by the bill without charge other than changes in premium due. Payment of the change in premium and refunds, if either result from the change in coverage, depending upon the actual coverages on the policy, are required.

Notice Requirements

Insurers are required to provide a notice, by September 1, 2020, informing motor vehicle policyholders that effective January 1, 2021:

- The Florida Motor Vehicle No-Fault Law (PIP) is repealed January 1, 2021,
- The policyholder is no longer required to carry PIP coverage,
- PIP is no longer available for purchase,
- New or renewal coverage will not include PIP,
- New BI requirements begin on January 1, 2021, which are 25/50/10,
- That insurers must offer medical payments coverage with selectable limits of $5,000 and $10,000, or at limits greater than $5,000; optional deductible of $500; death benefit of $5,000; and describe the nature of medical payments coverage,
- A policyholder may obtain uninsured/underinsured motorist coverage to protect themselves and their insureds from damages caused by an uninsured/underinsured driver,
- Policies that comply with the requirements of law at the time of issue are deemed to meet the new requirements, until the policy is renewed, nonrenewed, or canceled,

[26] In the alternative, businesses may qualify for self-insurance by maintaining a sufficient net worth determined annually by DHSMV by rule. S. 324.171, F.S.

- They may change their policy to comply with the new requirements, and
- They may contact the name and telephone number provided in the notice with questions.

The notice is also required to state that PIP provides medical payments coverage for the policyholder, passengers, and resident relatives,[27] while BI protects the insured against loss if they are at fault in an accident and are legally responsible for bodily injuries or deaths of others. The notice is subject to approval by OIR.

Optional Medical Payments Coverage

The bill requires motor vehicle insurers to offer medical payments coverage before issuing an initial policy. Unless the insured rejects medical payments coverage in writing, medical payments coverage is deemed included with $10,000 in coverage.

The insurer is required to offer:

- A $5,000 coverage limit,
- A $10,000 coverage limit, or
- Coverage limits exceeding $5,000.

The insurer is allowed to offer medical payments coverage deductibles from zero to $500. The insurer must notify the policyholder annually of the availability of medical payments coverage.

The bill establishes insurer reserve requirements tied to medical payments coverage claims. Medical payments coverage benefits are not a lien on personal recoveries associated with the claim event, nor does the insurer have a right to sue a recipient of medical coverage payments unless the payments were the result of fraud. The insurer may claim subrogation rights against persons that are not insured on the policy, but the right is subordinate to the insured's own right against such person. The insurer may recover from an insured who receives full payment for damages that impairs the insurer's subrogation rights in specified circumstances. Death benefits may not be subrogated.

Named Driver Exclusion

The bill provides that resident relatives must be included in coverage provided by motor vehicle liability policies, but authorizes insurers and policyholders to exclude named drivers, including a resident relative, from a private passenger motor vehicle insurance policy. An individual is not covered for damages that occur while operating a motor vehicle that is insured under a policy that excludes the individual by name. The bill prohibits exclusion for periods when the excluded named driver is not operating a motor vehicle covered under the policy (e.g., when they are a passenger in the vehicle), if the exclusion is unfairly discriminatory by law, as determined by the OIR, or if the exclusion is inconsistent with the underwriting guidelines filed by the insurer with OIR. The exclusion of a named driver is contingent upon the written consent of a policyholder. The bill requires insurers to list excluded named drivers on the policy's declarations page or on a policy endorsement. Individuals who are named as excluded drivers on a particular policy may secure their insurance obligations under another policy.

Newly Acquired and Temporary Substitute Motor Vehicles

The bill allows insurers to exclude coverage of motor vehicles not named on a policy if the vehicle does not qualify as a "newly acquired vehicle"[28] or "temporary substitute"[29] vehicle and was owned by the insured or given to them for their use for more than 30 days prior to the claim event.

---

[27] A "resident relative" is defined as "a person related to a named insured by any degree by blood, marriage, or adoption, including a ward or foster child, who usually makes her or his home in the same family unit as the named insured, whether or not he or she is temporarily living elsewhere."

[28] "Newly acquired vehicle" means a vehicle owned by a named insured or resident relative of the named insured which was acquired within 30 days before an accident.

Rate Filings

Initial insurer rate filings for motor vehicle liability submitted to OIR on or after January 1, 2021, are required to be based on the new requirements and may only be approved through the file and use approval process.

Tort Liability

By repealing PIP, the bill removes the limitation on tort liability provided under PIP. When drivers are at fault in an accident, they are fully liable for any damages they cause. Due to this change, the bill removes the conditional exclusion[30] of tort damages for pain, suffering, mental anguish, and inconvenience. Beginning January 1, 2021, the bill makes uninsured motorist insurers subject to tort damages for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of capacity for the enjoyment of life experienced in the past and to be experienced in the future.

Appropriation

The bill appropriates $83,651 from the Insurance Regulatory Trust Fund to OIR to implement changes made by the bill.

B. SECTION DIRECTORY:

Section 1: Repeals ss. 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S., relating to Florida Motor Vehicle No-Fault Law.
Section 2: Repeals s. 627.7407, F.S., relating to application of the Florida Motor Vehicle No-Fault Law.
Section 3: Amends s. 316.646, F.S., relating to security required; proof of security and display thereof.
Section 4: Amends s. 318.18, F.S., relating to amount of penalties.
Section 5: Amends s. 320.02, F.S., relating to registration required; application for registration; forms.
Section 6: Amends s. 320.0609, F.S., relating to transfer and exchange of registration license plates; transfer fee.
Section 7: Amends s. 320.27, F.S., relating to motor vehicle dealers.
Section 8: Amends s. 320.771, F.S., relating to license required of recreational vehicle dealers.
Section 9: Amends s. 322.251, F.S., relating to notice of cancellation, suspension, revocation, or disqualification of license.
Section 10: Amends s. 322.34, F.S., relating to driving while license suspended, revoked, canceled, or disqualified.
Section 11: Amends s. 324.011, F.S., relating to purpose of chapter.
Section 12: Amends s. 324.021, F.S., relating to definitions; minimum insurance required.
Section 13: Amends s. 324.022, F.S., relating to financial responsibility for property damage.
Section 14: Amends s. 324.0221, F.S., relating to reports by insurers to the department; suspension of driver license and vehicle registrations; reinstatement.
Section 15: Creates s. 324.0222, F.S., relating to application of suspensions for failure to maintain security; reinstatement.

---

[29] "Temporary substitute vehicle" means any motor vehicle as defined in s. 320.01(1) which is not owned by the named insured and which is temporarily used with the permission of the owner as a substitute for the owned motor vehicle designated on the policy when the owned vehicle is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction.

[30] An uninsured motorist coverage insurer is liable for tort damages for pain, suffering, mental anguish, and inconvenience if the damages exceed the "verbal threshold" provided in s. 627.737(2)(a)-(d), F.S. The verbal threshold allows a plaintiff to recover such damages if the injury or disease consists in whole or in part of:

- Significant and permanent loss of an important bodily function.
- Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
- Significant and permanent scarring or disfigurement.
- Death.

Section 16: Amends s. 324.023, F.S., relating to financial responsibility for bodily injury or death.
Section 17: Amends s. 324.031, F.S., relating to manner of proving financial responsibility.
Section 18: Amends s. 324.032, F.S., relating to manner of proving financial responsibility; for-hire passenger transportation vehicles.
Section 19: Amends s. 324.051, F.S., relating to reports of crashes; suspensions of licenses and registrations.
Section 20: Amends s. 324.071, F.S., relating to reinstatement; renewal of license; reinstatement fee.
Section 21: Amends s. 324.091, F.S., relating to notice to department; notice to insurer.
Section 22: Amends s. 324.151, F.S., relating to motor vehicle liability policies; required provisions.
Section 23: Amends s. 324.161, F.S., relating to proof of financial responsibility; deposit.
Section 24: Amends s. 324.171, F.S., relating to self-insurer.
Section 25: Amends s. 324.251, F.S., relating to short title.
Section 26: Amends s. 400.9905, F.S., relating to definitions.
Section 27: Amends s. 400.991, F.S., relating to license requirements; background screenings; prohibitions.
Section 28: Amends s. 400.9935, F.S., relating to clinic responsibilities.
Section 29: Amends s. 409.901, F.S., relating to definitions.
Section 30: Amends s. 409.910, F.S., relating to responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.
Section 31: Amends s. 456.057, F.S., relating to ownership and control of patient records; report or copies of records to be furnished; disclosure of information.
Section 32: Amends s. 456.072, F.S., grounds for discipline; penalties; enforcement.
Section 33: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.
Section 34: Amends s. 626.989, F.S., relating to investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.
Section 35: Amends s. 627.06501, F.S., relating to insurance discounts for certain persons completing driver improvement course.
Section 36: Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.
Section 37: Amends s. 627.0652, F.S., relating to insurance discounts for certain persons completing safety course.
Section 38: Amends s. 627.0653, F.S., relating to insurance discounts for specified motor vehicle equipment.
Section 39: Amends s. 627.4132, F.S., relating to stacking of coverages prohibited.
Section 40: Amends s. 627.7263, F.S., relating to rental and leasing driver's insurance to be primary; exception.
Section 41: Creates s. 627.7265, F.S., relating to motor vehicle insurance; medical payments coverage.
Section 42: Amends s. 627.727, F.S., relating to motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.
Section 43: Amends s. 627.7275, F.S., relating to motor vehicle liability.
Section 44: Creates s. 627.7278, F.S., relating to applicability and construction; notice to policyholders.
Section 45: Amends s. 627.728, F.S., relating to cancellations; nonrenewals.
Section 46: Amends s. 627.7295, F.S., relating to motor vehicle insurance contracts.
Section 47: Amends s. 627.7415, F.S., relating to commercial motor vehicles; additional liability insurance coverage.
Section 48: Creates s. 627.747, F.S., relating to named driver exclusion.
Section 49: Effective upon becoming law, amends s. 627.748, F.S., relating to transportation network companies.
Section 50: Amends s. 627.749, F.S., relating to autonomous vehicles; insurance requirements.
Section 51: Amends s. 627.8405, F.S., relating to prohibited acts; financing companies.
Section 52: Amends s. 627.915, F.S., relating to insurer experience reporting.
Section 53: Amends s. 628.909, F.S., relating to applicability of other laws.
Section 54: Amends s. 705.184, F.S., relating to derelict or abandoned motor vehicles on the premises of public-use airports.

Section 55: Amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.
Section 56: Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.
Section 57: Makes an appropriation.
Section 58: Provides an effective date of January 1, 2021, except as otherwise expressly provided by the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. Premium tax revenues may be affected to the extent that lost revenues associated with PIP premiums are offset by changes in revenues associated with expected increases in BI premiums.

2. Expenditures:

   Indeterminate. Hospitals may experience increased costs to the extent that medical reimbursements previously funded through PIP are shifted to secondary coverages or are lost through lack of secondary coverage. OIR is required to approve new forms and rates related to medical payments coverage and will receive filings to implement the coverage changes made by the bill. The bill appropriates $83,651 to OIR for this purpose.

   There will be impacts related to Florida Driver License Information System and MyDMV Portal and Mainframe within the Department of Highway Safety and Motor vehicles. There will be programming needed to modify the Financial Responsibility process to replace Personal Injury Protection with Bodily Injury, as specified in the bill.[31] However, these modifications can be completed utilizing existing department resources.[32]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. Local governments are likely to achieve savings on motor vehicle insurance, depending upon the amount of coverage secured. Local governments operating hospitals may experience increased costs to the extent that medical reimbursements previously funded through PIP are shifted to secondary coverages or are lost through lack of secondary coverage.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Motor vehicle insurers are required to file new forms and rates and adjust their practices consistent with the changes made by the bill. Individuals and businesses must secure coverage that complies with these changes, as well.

In a September 2016 report from OIR, Pinnacle Actuarial Resources estimated the premium impacts of PIP repeal on consumers that carry a complete set of automobile insurance coverages.[33] Pinnacle also provided estimates that considered the outcome if the BI limit increased by law to 25/50. They estimated that consumers might save 8.1 percent in liabilities only[34] premiums and 5.6 percent in

[31] Highway Safety and Motor Vehicles, Agency Analysis of 2020 SB 378, p. 6 (Oct. 30, 2019).
[32] Email from Susan Carey, Chief Financial Officer, Florida Department of Highway Safety and Motor Vehicles, RE: HB 771 Motor Vehicle Insurance Fiscal (Feb. 6, 2020).
[33] *Supra* note 16 at app. 3, p. 1 (p. 272).
[34] "Liabilities, only" includes Bodily Injury, Personal Injury Protection, Uninsured Motorist, and Property Damage coverages.

overall motor vehicle premiums or $68.12 per car annually. Pinnacle also projected some negative impact on health care providers and health care insurance premiums due to the elimination of PIP.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking, but any rules that reference personal injury protection or restate bodily injury coverage requirements that are changed by the bill may require revision.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to motor vehicle insurance; repealing ss. 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S., which comprise the Florida Motor Vehicle No-Fault Law; repealing s. 627.7407, F.S., relating to application of the Florida Motor Vehicle No-Fault Law; amending s. 316.646, F.S.; revising a requirement for proof of security on a motor vehicle and the applicability of the requirement; amending s. 318.18, F.S.; conforming a provision to changes made by the act; amending s. 320.02, F.S.; revising the motor vehicle insurance coverages that an applicant must show to register certain vehicles with the Department of Highway Safety and Motor Vehicles; conforming a provision to changes made by the act; revising construction; amending s. 320.0609, F.S.; conforming a provision to changes made by the act; amending s. 320.27, F.S.; defining the term "garage liability insurance"; revising garage liability insurance requirements for motor vehicle dealer applicants; conforming a provision to changes made by the act; amending s. 320.771, F.S.; revising garage liability insurance requirements for recreational vehicle dealer license applicants;

amending ss. 322.251 and 322.34, F.S.; conforming provisions to changes made by the act; amending s. 324.011, F.S.; revising legislative intent; amending s. 324.021, F.S.; revising definitions of the terms "motor vehicle" and "proof of financial responsibility"; revising minimum coverage requirements for proof of financial responsibility for specified motor vehicles; defining the term "for-hire passenger transportation vehicle"; conforming provisions to changes made by the act; amending s. 324.022, F.S.; revising minimum liability coverage requirements for motor vehicle owners or operators; revising authorized methods for meeting such requirements; deleting a provision relating to an insurer's duty to defend certain claims; revising the vehicles that are excluded from the definition of the term "motor vehicle"; providing security requirements for certain excluded vehicles; conforming provisions to changes made by the act; conforming cross-references; amending s. 324.0221, F.S.; revising coverages that subject a policy to certain insurer reporting and notice requirements; conforming provisions to changes made by the act; creating s. 324.0222, F.S.; providing that driver license or registration suspensions for failure to maintain

required security which were in effect before a specified date remain in full force and effect; providing that such suspended licenses or registrations may be reinstated as provided in a specified section; amending s. 324.023, F.S.; conforming cross-references; amending s. 324.031, F.S.; specifying a method of proving financial responsibility; revising the amount of a certificate of deposit required to elect a certain method of proof of financial responsibility; revising excess liability coverage requirements for a person electing to use such method; amending s. 324.032, F.S.; revising financial responsibility requirements for owners or lessees of for-hire passenger transportation vehicles; amending ss. 324.051, 324.071, and 324.091, F.S.; making technical changes; amending s. 324.151, F.S.; revising requirements for motor vehicle liability insurance policies relating to coverage, and exclusion from coverage, for certain drivers and vehicles; defining terms; conforming provisions to changes made by the act; making technical changes; amending s. 324.161, F.S.; revising requirements for a certificate of deposit that is required if a person elects a certain method of proving financial responsibility; amending s. 324.171, F.S.; revising the minimum net

worth requirements to qualify certain persons as self-insurers; conforming provisions to changes made by the act; amending s. 324.251, F.S.; revising the short title and an effective date; amending s. 400.9905, F.S.; revising the definition of the term "clinic"; amending ss. 400.991 and 400.9935, F.S.; conforming provisions to changes made by the act; amending s. 409.901, F.S.; revising the definition of the term "third-party benefit"; amending s. 409.910, F.S.; revising the definition of the term "medical coverage"; amending s. 456.057, F.S.; conforming a cross-reference; amending s. 456.072, F.S.; revising specified grounds for discipline for certain health professions; amending s. 626.9541, F.S.; conforming a provision to changes made by the act; revising the type of insurance coverage applicable to a certain prohibited act; amending s. 626.989, F.S.; revising the definition of the term "fraudulent insurance act"; amending s. 627.06501, F.S.; revising coverages that may provide for a reduction in motor vehicle insurance policy premium charges under certain circumstances; amending s. 627.0651, F.S.; specifying requirements for initial rate filings for motor vehicle liability policies submitted to the Office of Insurance Regulation beginning on a specified date; amending s.

627.0652, F.S.; revising coverages that must provide a premium charge reduction under certain circumstances; amending s. 627.0653, F.S.; revising coverages subject to premium discounts for specified motor vehicle equipment; amending s. 627.4132, F.S.; revising the coverages of a motor vehicle policy which are subject to a stacking prohibition; amending s. 627.7263, F.S.; revising coverages that are deemed primary, except under certain circumstances, for the lessor of a motor vehicle for lease or rent; revising a notice that is required if the lessee's coverage is to be primary; creating s. 627.7265, F.S.; specifying persons whom medical payments coverage must protect; specifying the minimum medical expense and death benefit limits; specifying coverage options an insurer must and may offer; providing that motor vehicle liability insurance policies are deemed to have medical payments coverage at a certain limit and with no deductible unless rejected or modified by the policyholder by certain means; specifying requirements for certain forms approved by the office; requiring insurers to provide policyholders with a certain annual notice; providing construction relating to limits on certain other coverages; requiring insurers, upon receiving certain notice of an accident, to hold a specified

reserve for certain purposes for a certain timeframe; providing that the reserve requirement does not require insurers to establish a claim reserve for accounting purposes; specifying that an insurer providing medical payments coverage benefits may not have a lien on a certain recovery and may not have a certain cause of action; authorizing insurers to include policy provisions allowing for subrogation, under certain circumstances, for medical payments benefits paid; providing construction; specifying a requirement for an insured for repayment of medical payments benefits under certain circumstances; prohibiting insurers from including policy provisions allowing for subrogation for death benefits paid; amending s. 627.727, F.S.; revising the legal liability of an uninsured motorist coverage insurer; conforming provisions to changes made by the act; amending s. 627.7275, F.S.; revising required coverages for a motor vehicle insurance policy; conforming provisions to changes made by the act; creating s. 627.7278, F.S.; defining the term "minimum security requirements"; providing a prohibition, requirements, applicability, and construction relating to motor vehicle insurance policies as of a certain date; requiring insurers to allow certain insureds to

make certain coverage changes, subject to certain conditions; requiring an insurer to provide, by a specified date, a specified notice to policyholders relating to requirements under the act; amending s. 627.728, F.S.; conforming a provision to changes made by the act; amending s. 627.7295, F.S.; revising the definitions of the terms "policy" and "binder"; revising the coverages of a motor vehicle insurance policy for which a licensed general lines agent may charge a specified fee; conforming a provision to changes made by the act; amending s. 627.7415, F.S.; revising additional liability insurance requirements for commercial motor vehicles; creating s. 627.747, F.S.; providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; providing that such policies may not exclude coverage under certain circumstances; amending s. 627.748, F.S.; revising insurance requirements for transportation network company drivers; conforming provisions to changes made by the act; amending s. 627.749, F.S.; conforming a provision to changes made by the act; amending s. 627.8405, F.S.; revising coverages in a policy sold in combination with an accidental death and dismemberment policy which a

premium finance company may not finance; revising rulemaking authority of the Financial Services Commission; amending ss. 627.915, 628.909, 705.184, and 713.78, F.S.; conforming provisions to changes made by the act; amending s. 817.234, F.S.; revising coverages that are the basis of specified prohibited false and fraudulent insurance claims; conforming provisions to changes made by the act; providing an appropriation; providing effective dates.

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

Section 1. Sections 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, Florida Statutes, are repealed.

Section 2. Section 627.7407, Florida Statutes, is repealed.

Section 3. Subsection (1) of section 316.646, Florida Statutes, is amended to read:

316.646 Security required; proof of security and display thereof.—

(1) Any person required by s. 324.022 to maintain liability security for property damage, ~~liability security, required by s. 324.023 to maintain liability security for~~ bodily injury, or death~~, or required by s. 627.733 to maintain personal~~

~~injury protection security on a motor vehicle~~ shall have in his or her immediate possession at all times while operating such motor vehicle proper proof of maintenance of the ~~required~~ security required under s. 324.021(7).

(a) Such proof must ~~shall~~ be in a uniform paper or electronic format, as prescribed by the department, a valid insurance policy, an insurance policy binder, a certificate of insurance, or such other proof as may be prescribed by the department.

(b)1. The act of presenting to a law enforcement officer an electronic device displaying proof of insurance in an electronic format does not constitute consent for the officer to access any information on the device other than the displayed proof of insurance.

2. The person who presents the device to the officer assumes the liability for any resulting damage to the device.

Section 4. Paragraph (b) of subsection (2) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(2) Thirty dollars for all nonmoving traffic violations and:

(b) For all violations of ss. 320.0605, 320.07(1), 322.065, and 322.15(1). A ~~Any~~ person who is cited for a

violation of s. 320.07(1) shall be charged a delinquent fee pursuant to s. 320.07(4).

1. If a person who is cited for a violation of s. 320.0605 or s. 320.07 can show proof of having a valid registration at the time of arrest, the clerk of the court may dismiss the case and may assess a dismissal fee of up to $10, from which the clerk shall remit $2.50 to the Department of Revenue for deposit into the General Revenue Fund. A person who finds it impossible or impractical to obtain a valid registration certificate must submit an affidavit detailing the reasons for the impossibility or impracticality. The reasons may include, but are not limited to, the fact that the vehicle was sold, stolen, or destroyed; that the state in which the vehicle is registered does not issue a certificate of registration; or that the vehicle is owned by another person.

2. If a person who is cited for a violation of s. 322.03, s. 322.065, or s. 322.15 can show a driver license issued to him or her and valid at the time of arrest, the clerk of the court may dismiss the case and may assess a dismissal fee of up to $10, from which the clerk shall remit $2.50 to the Department of Revenue for deposit into the General Revenue Fund.

3. If a person who is cited for a violation of s. 316.646 can show proof of security as required by s. 324.021(7) ~~s. 627.733~~, issued to the person and valid at the time of arrest, the clerk of the court may dismiss the case and may assess a

dismissal fee of up to $10, from which the clerk shall remit $2.50 to the Department of Revenue for deposit into the General Revenue Fund. A person who finds it impossible or impractical to obtain proof of security must submit an affidavit detailing the reasons for the impracticality. The reasons may include, but are not limited to, the fact that the vehicle has since been sold, stolen, or destroyed~~; that the owner or registrant of the vehicle is not required by s. 627.733 to maintain personal injury protection insurance;~~ or that the vehicle is owned by another person.

Section 5. Paragraphs (a) and (d) of subsection (5) of section 320.02, Florida Statutes, are amended to read:

320.02 Registration required; application for registration; forms.—

(5)(a) Proof that bodily injury liability coverage and property damage liability coverage ~~personal injury protection benefits~~ have been purchased if required under s. 324.022, s. 324.032, or s. 627.742 ~~s. 627.733, that property damage liability coverage has been purchased as required under s. 324.022~~, that bodily injury liability ~~or death~~ coverage has been purchased if required under s. 324.023, and that combined bodily liability insurance and property damage liability insurance have been purchased if required under s. 627.7415 must ~~shall~~ be provided in the manner prescribed by law by the applicant at the time of application for registration of any motor vehicle that

is subject to such requirements. The issuing agent may not ~~shall refuse to~~ issue registration if such proof of purchase is not provided. Insurers shall furnish uniform proof-of-purchase cards in a paper or electronic format in a form prescribed by the department and include the name of the insured's insurance company, the coverage identification number, and the make, year, and vehicle identification number of the vehicle insured. The card must contain a statement notifying the applicant of the penalty specified under s. 316.646(4). The card or insurance policy, insurance policy binder, or certificate of insurance or a photocopy of any of these; an affidavit containing the name of the insured's insurance company, the insured's policy number, and the make and year of the vehicle insured; or such other proof as may be prescribed by the department constitutes ~~shall constitute~~ sufficient proof of purchase. If an affidavit is provided as proof, it must be in substantially the following form:

Under penalty of perjury, I ...(Name of insured)... do hereby certify that I have ...(bodily injury liability and ~~Personal Injury Protection,~~ property damage liability~~, and, if required, Bodily Injury Liability~~)... insurance currently in effect with ...(Name of insurance company)... under ...(policy number)... covering ...(make, year, and vehicle identification number of vehicle).... ...(Signature of Insured)...

Such affidavit must include the following warning:

WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS SUBJECT TO PROSECUTION.

If an application is made through a licensed motor vehicle dealer as required under s. 319.23, the original or a photocopy ~~photostatic copy~~ of such card, insurance policy, insurance policy binder, or certificate of insurance or the original affidavit from the insured must ~~shall~~ be forwarded by the dealer to the tax collector of the county or the Department of Highway Safety and Motor Vehicles for processing. By executing the ~~aforesaid~~ affidavit, a ~~no~~ licensed motor vehicle dealer is not ~~will be~~ liable in damages for any inadequacy, insufficiency, or falsification of any statement contained therein. ~~A card must also indicate the existence of any bodily injury liability insurance voluntarily purchased.~~

(d) The verifying of ~~proof of personal injury protection insurance, proof of property damage liability insurance, proof of combined bodily liability insurance and property damage liability insurance, or~~ proof of financial responsibility ~~insurance~~ and the issuance or failure to issue the motor vehicle

registration under ~~the provisions of~~ this chapter may not be construed in any court as a warranty of the reliability or accuracy of the evidence of such proof, or as meaning that the provisions of any insurance policy furnished as proof of financial responsibility comply with state law. Neither the department nor any tax collector is liable in damages for any inadequacy, insufficiency, falsification, or unauthorized modification of any item of ~~the proof of personal injury protection insurance, proof of property damage liability insurance, proof of combined bodily liability insurance and property damage liability insurance, or~~ proof of financial responsibility before ~~insurance prior to~~, during, or subsequent to the verification of the proof. The issuance of a motor vehicle registration does not constitute prima facie evidence or a presumption of insurance coverage.

Section 6. Paragraph (b) of subsection (1) of section 320.0609, Florida Statutes, is amended to read:

320.0609 Transfer and exchange of registration license plates; transfer fee.—

(1)

(b) The transfer of a license plate from a vehicle disposed of to a newly acquired vehicle does not constitute a new registration. The application for transfer must ~~shall~~ be accepted without requiring proof of ~~personal injury protection or~~ liability insurance.

Section 7. Paragraph (g) is added to subsection (1) of section 320.27, Florida Statutes, and subsection (3) of that section is amended, to read:

320.27 Motor vehicle dealers.—

(1) DEFINITIONS.—The following words, terms, and phrases when used in this section have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(g) "Garage liability insurance" means, beginning January 1, 2021, combined single-limit liability coverage, including property damage and bodily injury liability coverage, in the amount of at least $60,000.

(3) APPLICATION AND FEE.—The ~~application for the~~ license application must ~~shall~~ be in such form as may be prescribed by the department and is ~~shall be~~ subject to such rules ~~with respect thereto~~ as may be so prescribed by the department ~~it~~. Such application must ~~shall~~ be verified by oath or affirmation and must ~~shall~~ contain a full statement of the name and birth date of the person or persons applying for the license ~~therefor~~; the name of the firm or copartnership, with the names and places of residence of all members ~~thereof~~, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or

places of residence of the applicant; and the prior business in which the applicant has been engaged and its ~~the~~ location ~~thereof~~. The ~~Such~~ application must ~~shall~~ describe the exact location of the place of business and must ~~shall~~ state whether the place of business is owned by the applicant and when acquired, or, if leased, a true copy of the lease must ~~shall~~ be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which must ~~shall~~ be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business that will ~~which shall~~ be conducted at that location. The application must ~~shall~~ contain a statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell must ~~shall~~ be included, or an independent (nonfranchised) motor vehicle dealer. The application must ~~shall~~ contain other relevant information as may be required by the department. The

applicant shall furnish~~, including~~ evidence, in a form approved by the department, that the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy having the coverages and limits of the garage liability insurance coverage in accordance with paragraph (1)(g)~~, which shall include, at a minimum, $25,000 combined single-limit liability coverage including bodily injury and property damage protection and $10,000 personal injury protection~~. However, a salvage motor vehicle dealer as defined in subparagraph (1)(c)5. is exempt from the requirements for garage liability insurance ~~and personal injury protection insurance~~ on those vehicles that cannot be legally operated on roads, highways, or streets in this state. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy must ~~shall~~ be for the license period, and evidence of a new or continued policy must ~~shall~~ be delivered to the department at the beginning of each license period. Upon making an initial application, the applicant shall pay to the department a fee of $300 in addition to any other fees required by law. Applicants may choose to extend the licensure period for 1 additional year for a total of 2 years. An initial applicant shall pay to the department a fee of $300 for the first year and $75 for the

second year, in addition to any other fees required by law. An applicant for renewal shall pay to the department $75 for a 1-year renewal or $150 for a 2-year renewal, in addition to any other fees required by law. Upon making an application for a change of location, the applicant ~~person~~ shall pay a fee of $50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant shall~~, must~~ file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing must ~~shall~~ be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

Section 8. Paragraph (j) of subsection (3) of section 320.771, Florida Statutes, is amended to read:

320.771 License required of recreational vehicle dealers.—

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:

(j) A statement that the applicant is insured under a garage liability insurance policy in accordance with s. 320.27(1)(g)~~, which shall include, at a minimum, $25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and $10,000 personal injury protection,~~ if the applicant is to be licensed as a dealer in, or intends to sell, recreational vehicles.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

Section 9. Subsections (1) and (2) of section 322.251, Florida Statutes, are amended to read:

322.251 Notice of cancellation, suspension, revocation, or disqualification of license.—

(1) All orders of cancellation, suspension, revocation, or disqualification issued under ~~the provisions of~~ this chapter, chapter 318, or chapter 324 must~~, or ss. 627.732-627.734 shall~~

be given either by personal delivery thereof to the licensee whose license is being canceled, suspended, revoked, or disqualified or by deposit in the United States mail in an envelope, first class, postage prepaid, addressed to the licensee at his or her last known mailing address furnished to the department. Such mailing by the department constitutes notification, and any failure by the person to receive the mailed order will not affect or stay the effective date or term of the cancellation, suspension, revocation, or disqualification of the licensee's driving privilege.

(2) The giving of notice and an order of cancellation, suspension, revocation, or disqualification by mail is complete upon expiration of 20 days after deposit in the United States mail for all notices except those issued under chapter 324 ~~or ss. 627.732-627.734~~, which are complete 15 days after deposit in the United States mail. Proof of the giving of notice and an order of cancellation, suspension, revocation, or disqualification in either manner must ~~shall~~ be made by entry in the records of the department that such notice was given. The entry is admissible in the courts of this state and constitutes sufficient proof that such notice was given.

Section 10. Paragraph (a) of subsection (8) of section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(8)(a) Upon the arrest of a person for the offense of driving while the person's driver license or driving privilege is suspended or revoked, the arresting officer shall determine:

1. Whether the person's driver license is suspended or revoked, or the person is under suspension or revocation equivalent status.

2. Whether the person's driver license has remained suspended or revoked, or the person has been under suspension or revocation equivalent status, since a conviction for the offense of driving with a suspended or revoked license.

3. Whether the suspension, revocation, or suspension or revocation equivalent status was made under s. 316.646 ~~or s. 627.733~~, relating to failure to maintain required security, or under s. 322.264, relating to habitual traffic offenders.

4. Whether the driver is the registered owner or co-owner of the vehicle.

Section 11. Section 324.011, Florida Statutes, is amended to read:

324.011 Legislative intent and purpose of chapter.—It is the Legislature's intent of this chapter to ensure that the privilege of owning or operating a motor vehicle in this state is exercised ~~recognize the existing privilege to own or operate a motor vehicle on the public streets and highways of this state when such vehicles are used~~ with due consideration for others' safety ~~others~~ and their property, ~~and~~ to promote safety, and to

provide financial security requirements for ~~such~~ owners and ~~or~~ operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle. Therefore, this chapter requires that every owner or operator of a motor vehicle required to be registered in this state establish, maintain, and ~~it is required herein that the operator of a motor vehicle involved in a crash or convicted of certain traffic offenses meeting the operative provisions of s. 324.051(2) shall respond for such damages and~~ show proof of financial ability to respond for damages arising out of the ownership, maintenance, or use of a motor vehicle ~~in future accidents~~ as a requisite to owning or operating a motor vehicle in this state ~~his or her future exercise of such privileges~~.

Section 12. Subsections (1) and (7) and paragraph (c) of subsection (9) of section 324.021, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) MOTOR VEHICLE.—Every self-propelled vehicle that is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors,

power shovels, and well drillers, and every vehicle that is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any personal delivery device or mobile carrier as defined in s. 316.003, bicycle, or moped. ~~However, the term "motor vehicle" does not include a motor vehicle as defined in s. 627.732(3) when the owner of such vehicle has complied with the requirements of ss. 627.730-627.7405, inclusive, unless the provisions of s. 324.051 apply; and, in such case, the applicable proof of insurance provisions of s. 320.02 apply.~~

(7) PROOF OF FINANCIAL RESPONSIBILITY. ~~That~~ Proof of ability to respond in damages for liability on account of crashes arising out of the ownership, maintenance, or use of a motor vehicle:

(a) Beginning January 1, 2021, with respect to a motor vehicle that is not a commercial motor vehicle, nonpublic sector bus, or for-hire passenger transportation vehicle, in the amount of:

1. Twenty-five thousand dollars for ~~$10,000 because of~~ bodily injury to, or the death of, one person in any one crash and,~~;~~

~~(b)~~ subject to such limits for one person, in the amount of $50,000 for ~~$20,000 because of~~ bodily injury to, or the death of, two or more persons in any one crash; and

2.~~(c)~~ Ten thousand dollars for damage ~~In the amount of~~

~~$10,000 because of injury~~ to, or destruction of, property of others in any one crash.~~; and~~

(b)~~(d)~~ With respect to commercial motor vehicles ~~and nonpublic sector buses~~, in the amounts specified in s. 627.7415 ~~ss. 627.7415 and 627.742, respectively~~.

(c) With respect to nonpublic sector buses, in the amounts specified in s. 627.742.

(d) With respect to for-hire passenger transportation vehicles, in the amounts specified in s. 324.032.

(9) OWNER; OWNER/LESSOR.—

(c) *Application.*—

1. The limits on liability in subparagraphs (b)2. and 3. do not apply to an owner of motor vehicles that are used for commercial activity in the owner's ordinary course of business, other than a rental company that rents or leases motor vehicles. For purposes of this paragraph, the term "rental company" includes only an entity that is engaged in the business of renting or leasing motor vehicles to the general public and that rents or leases a majority of its motor vehicles to persons with no direct or indirect affiliation with the rental company. The term also includes a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days. The term "rental company" also includes:

a. A related rental or leasing company that is a subsidiary of the same parent company as that of the renting or

leasing company that rented or leased the vehicle.

b. The holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to or to facilitate an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company, as described in this subparagraph, in the operation of such rental company's business.

2. Furthermore, with respect to commercial motor vehicles as defined in s. 207.002 or s. 320.01 ~~s. 627.732~~, the limits on liability in subparagraphs (b)2. and 3. do not apply if, at the time of the incident, the commercial motor vehicle is being used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is required pursuant to such act to carry placards warning others of the hazardous cargo, unless at the time of lease or rental either:

a. The lessee indicates in writing that the vehicle will not be used to transport materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

b. The lessee or other operator of the commercial motor vehicle has in effect insurance with limits of at least $5

million ~~$5,000,000~~ combined property damage and bodily injury liability.

(12) FOR-HIRE PASSENGER TRANSPORTATION VEHICLE.—Every for-hire vehicle as defined in s. 320.01(15) which is offered or used to provide transportation for persons, including taxicabs, limousines, and jitneys.

Section 13. Section 324.022, Florida Statutes, is amended to read:

324.022 Financial responsibility requirements ~~for property damage~~.—

(1)(a) Beginning January 1, 2021, every owner or operator of a motor vehicle required to be registered in this state shall establish and continuously maintain the ability to respond in damages for liability on account of accidents arising out of the use of the motor vehicle in the amount of:

1. Twenty-five thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of $50,000 for bodily injury to, or the death of, two or more persons in any one crash; and

2. Ten thousand dollars for ~~$10,000 because of~~ damage to, or destruction of, property of others in any one crash.

(b) The requirements of paragraph (a) ~~this section~~ may be met by one of the methods established in s. 324.031; by self-insuring as authorized by s. 768.28(16); or by maintaining a

motor vehicle liability insurance policy that ~~an insurance policy providing coverage for property damage liability in the amount of at least $10,000 because of damage to, or destruction of, property of others in any one accident arising out of the use of the motor vehicle. The requirements of this section may also be met by having a policy which~~ provides combined property damage liability and bodily injury liability coverage for any one crash arising out of the ownership, maintenance, or use of a motor vehicle and that conforms to the requirements of s. 324.151 in the amount of at least $60,000 for every owner or operator subject to the financial responsibility required in paragraph (a) ~~$30,000 for combined property damage liability and bodily injury liability for any one crash arising out of the use of the motor vehicle. The policy, with respect to coverage for property damage liability, must meet the applicable requirements of s. 324.151, subject to the usual policy exclusions that have been approved in policy forms by the Office of Insurance Regulation. No insurer shall have any duty to defend uncovered claims irrespective of their joinder with covered claims~~.

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

(a) "Motor vehicle" means any self-propelled vehicle that has four or more wheels and that is of a type designed and required to be licensed for use on the highways of this state, and any trailer or semitrailer designed for use with such vehicle. The term does not include the following:

1. A mobile home as defined in s. 320.01.

2. A motor vehicle that is used in mass transit and designed to transport more than five passengers, exclusive of the operator of the motor vehicle, and that is owned by a municipality, transit authority, or political subdivision of the state.

3. A school bus as defined in s. 1006.25, which must maintain security as required under s. 316.615.

4. A commercial motor vehicle as defined in s. 207.002 or s. 320.01, which must maintain security as required under ss. 324.031 and 627.7415.

5. A nonpublic sector bus, which must maintain security as required under ss. 324.031 and 627.742.

6.~~4.~~ A ~~vehicle providing~~ for-hire passenger transportation vehicle, which must ~~that is subject to the provisions of s. 324.031. A taxicab shall~~ maintain security as required under s. 324.032 ~~s. 324.032(1)~~.

7.~~5.~~ A personal delivery device as defined in s. 316.003.

(b) "Owner" means the person who holds legal title to a motor vehicle or the debtor or lessee who has the right to possession of a motor vehicle that is the subject of a security agreement or lease with an option to purchase.

(3) Each nonresident owner or registrant of a motor vehicle that, whether operated or not, has been physically present within this state for more than 90 days during the

preceding 365 days shall maintain security as required by subsection (1). The security must be ~~that is~~ in effect continuously throughout the period the motor vehicle remains within this state.

(4) An ~~The~~ owner or registrant of a motor vehicle who is ~~exempt from the requirements of this section if she or he is~~ a member of the United States Armed Forces and is called to or on active duty outside the United States in an emergency situation is exempt from this section while he or she~~. The exemption provided by this subsection applies only as long as the member of the Armed Forces~~ is on such active duty. This exemption ~~outside the United States and~~ applies only while the vehicle covered by the security is not operated by any person. Upon receipt of a written request by the insured to whom the exemption provided in this subsection applies, the insurer shall cancel the coverages and return any unearned premium or suspend the security required by this section. Notwithstanding s. 324.0221(2) ~~s. 324.0221(3)~~, the department may not suspend the registration or operator's license of an ~~any~~ owner or registrant of a motor vehicle during the time she or he qualifies for the ~~an~~ exemption under this subsection. An ~~Any~~ owner or registrant of a motor vehicle who qualifies for the ~~an~~ exemption under this subsection shall immediately notify the department before ~~prior to~~ and at the end of the expiration of the exemption.

Section 14. Subsections (1) and (2) of section 324.0221,

Florida Statutes, are amended to read:

324.0221 Reports by insurers to the department; suspension of driver license and vehicle registrations; reinstatement.—

(1)(a) Each insurer that has issued a policy providing ~~personal injury protection coverage or property damage~~ liability coverage shall report the cancellation or nonrenewal thereof to the department within 10 days after the processing date or effective date of each cancellation or nonrenewal. Upon the issuance of a policy providing ~~personal injury protection coverage or property damage~~ liability coverage to a named insured not previously insured by the insurer during that calendar year, the insurer shall report the issuance of the new policy to the department within 10 days. The report must ~~shall~~ be in the form ~~and format~~ and contain any information required by the department and must be provided in a format that is compatible with the data processing capabilities of the department. Failure by an insurer to file proper reports with the department as required by this subsection constitutes a violation of the Florida Insurance Code. These records may ~~shall~~ be used by the department only for enforcement and regulatory purposes, including the generation by the department of data regarding compliance by owners of motor vehicles with the requirements for financial responsibility coverage.

(b) With respect to an insurance policy providing ~~personal injury protection coverage or property damage~~ liability

coverage, each insurer shall notify the named insured, or the first-named insured in the case of a commercial fleet policy, in writing that any cancellation or nonrenewal of the policy will be reported by the insurer to the department. The notice must also inform the named insured that failure to maintain bodily injury liability ~~personal injury protection~~ coverage and property damage liability coverage on a motor vehicle when required by law may result in the loss of registration and driving privileges in this state and inform the named insured of the amount of the reinstatement fees required by this section. This notice is for informational purposes only, and an insurer is not civilly liable for failing to provide this notice.

(2) The department shall suspend, after due notice and an opportunity to be heard, the registration and driver license of any owner or registrant of a motor vehicle for ~~with respect to~~ which security is required under s. 324.022, s. 324.032, s. 627.7415, or s. 627.742 ~~ss. 324.022 and 627.733~~ upon:

(a) The department's records showing that the owner or registrant of such motor vehicle did not have the ~~in full force and effect when~~ required security in full force and effect ~~that complies with the requirements of ss. 324.022 and 627.733~~; or

(b) Notification by the insurer to the department, in a form approved by the department, of cancellation or termination of the required security.

Section 15. Section 324.0222, Florida Statutes, is created

to read:

324.0222 Application of suspensions for failure to maintain security; reinstatement.—All suspensions for failure to maintain required security as required by law in effect before January 1, 2021, remain in full force and effect on or after January 1, 2021. A driver may reinstate a suspended driver license or registration as provided under s. 324.0221.

Section 16. Section 324.023, Florida Statutes, is amended to read:

324.023 Financial responsibility for bodily injury or death.—In addition to any other financial responsibility required by law, every owner or operator of a motor vehicle that is required to be registered in this state, or that is located within this state, and who, regardless of adjudication of guilt, has been found guilty of or entered a plea of guilty or nolo contendere to a charge of driving under the influence under s. 316.193 after October 1, 2007, shall, by one of the methods established in s. 324.031(1)(a) or (b) ~~s. 324.031(1) or (2)~~, establish and maintain the ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle in the amount of $100,000 because of bodily injury to, or death of, one person in any one crash and, subject to such limits for one person, in the amount of $300,000 because of bodily injury to, or death of, two or more persons in any one crash and in the amount of $50,000 because of property damage in

any one crash. If the owner or operator chooses to establish and maintain such ability by furnishing a certificate of deposit pursuant to s. 324.031(1)(b) ~~s. 324.031(2)~~, such certificate of deposit must be at least $350,000. Such higher limits must be carried for a minimum period of 3 years. If the owner or operator has not been convicted of driving under the influence or a felony traffic offense for a period of 3 years from the date of reinstatement of driving privileges for a violation of s. 316.193, the owner or operator is ~~shall be~~ exempt from this section.

Section 17. Section 324.031, Florida Statutes, is amended to read:

324.031 Manner of proving financial responsibility.—

(1) ~~The owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) or s. 324.151, which policy is issued by an insurance carrier which is a member of the Florida Insurance Guaranty Association.~~ The operator or owner of a motor vehicle other than a for-hire passenger transportation vehicle ~~any other vehicle~~ may prove his or her financial responsibility by:

(a) ~~(1)~~ Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in ss. 324.021(8) and 324.151 which provides liability coverage for the motor vehicle

being operated;

(b) ~~(2)~~ Furnishing a certificate of self-insurance showing a deposit of cash in accordance with s. 324.161; or

(c) ~~(3)~~ Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

(2)(a) Beginning January 1, 2021, any person~~, including any firm, partnership, association, corporation, or other person, other than a natural person,~~ electing to use the method of proof specified in paragraph (1)(b) ~~subsection (2)~~ shall furnish a certificate of deposit equal to the number of vehicles owned times $60,000 ~~$30,000~~, to a maximum of $240,000. ~~$120,000;~~

(b) In addition, any such person~~, other than a natural person,~~ shall maintain insurance providing coverage conforming to the requirements of s. 324.151 in excess of the amount of the certificate of deposit, with limits of at least:

1. One hundred twenty-five thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of $250,000 for bodily injury to, or the death of, two or more persons in any one crash, and $50,000 for damage to, or destruction of, property of others in any one crash; or

2. Three hundred thousand dollars for combined bodily injury liability and property damage liability for any one crash ~~$10,000/20,000/10,000 or $30,000 combined single limits, and such excess insurance shall provide minimum limits of~~

~~$125,000/250,000/50,000 or $300,000 combined single limits. These increased limits shall not affect the requirements for proving financial responsibility under s. 324.032(1).~~

Section 18. Section 324.032, Florida Statutes, is amended to read:

324.032 ~~Manner of proving~~ Financial responsibility for~~,~~ for-hire passenger transportation vehicles. ~~Notwithstanding the provisions of s. 324.031:~~

(1) An owner or lessee of a for-hire passenger transportation vehicle that is required to be registered in this state shall establish and continuously maintain the ability to respond in damages for liability on account of accidents arising out of the ownership, maintenance, or use of the for-hire passenger transportation vehicle, in the amount of:

(a) One hundred twenty-five thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of $250,000 for bodily injury to, or the death of, two or more persons in any one crash; and ~~A person who is either the owner or a lessee required to maintain insurance under s. 627.733(1)(b) and who operates one or more taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy, but with minimum limits of $125,000/250,000/50,000.~~

(b) Fifty thousand dollars for damage to, or destruction of, property of others in any one crash ~~A person who is either the owner or a lessee required to maintain insurance under s. 324.021(9)(b) and who operates limousines, jitneys, or any other for-hire passenger vehicles, other than taxicabs, may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.031~~.

(2) Except as provided in subsection (3), the requirements of this section must be met by the owner or lessee providing satisfactory evidence of holding a motor vehicle liability policy conforming to the requirements of s. 324.151 which is issued by an insurance carrier that is a member of the Florida Insurance Guaranty Association.

(3)~~(2)~~ An owner or a lessee who ~~is required to maintain insurance under s. 324.021(9)(b) and who~~ operates at least 300 ~~taxicabs, limousines, jitneys, or any other~~ for-hire passenger transportation vehicles may provide financial responsibility by complying with ~~the provisions of~~ s. 324.171, which must ~~such compliance to~~ be demonstrated by maintaining at its principal place of business an audited financial statement, prepared in accordance with generally accepted accounting principles, and providing to the department a certification issued by a certified public accountant that the applicant's net worth is at least equal to the requirements of s. 324.171 as determined by

the Office of Insurance Regulation of the Financial Services Commission, including claims liabilities in an amount certified as adequate by a Fellow of the Casualty Actuarial Society.

Upon request by the department, the applicant shall ~~must~~ provide the department at the applicant's principal place of business in this state access to the applicant's underlying financial information and financial statements that provide the basis of the certified public accountant's certification. The applicant shall reimburse the requesting department for all reasonable costs incurred by it in reviewing the supporting information. The maximum amount of self-insurance permissible under this subsection is $300,000 and must be stated on a per-occurrence basis, and the applicant shall maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Office of Insurance Regulation. All risks self-insured shall remain with the owner or lessee providing it, and the risks are not transferable to any other person, unless a policy complying with subsections (1) and (2) ~~subsection (1)~~ is obtained.

Section 19. Paragraph (b) of subsection (2) of section 324.051, Florida Statutes, is amended to read:

324.051 Reports of crashes; suspensions of licenses and registrations.—

(2)

(b) This subsection does ~~shall~~ not apply:

1. To such operator or owner if such operator or owner had in effect at the time of such crash or traffic conviction a motor vehicle ~~an automobile~~ liability policy with respect to all of the registered motor vehicles owned by such operator or owner.

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such crash or traffic conviction a motor vehicle ~~an automobile~~ liability policy or bond with respect to his or her operation of motor vehicles not owned by him or her.

3. To such operator or owner if the liability of such operator or owner for damages resulting from such crash is, in the judgment of the department, covered by any other form of liability insurance or bond.

4. To any person who has obtained from the department a certificate of self-insurance, in accordance with s. 324.171, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this subsection unless it contains limits of not less than those specified in s. 324.021(7).

Section 20. Section 324.071, Florida Statutes, is amended to read:

324.071 Reinstatement; renewal of license; reinstatement

fee.—An ~~Any~~ operator or owner whose license or registration has been suspended pursuant to s. 324.051(2), s. 324.072, s. 324.081, or s. 324.121 may effect its reinstatement upon compliance with ~~the provisions of~~ s. 324.051(2)(a)3. or 4., or s. 324.081(2) and (3), as the case may be, and with one of the provisions of s. 324.031 and upon payment to the department of a nonrefundable reinstatement fee of $15. Only one such fee may ~~shall~~ be paid by any one person regardless ~~irrespective~~ of the number of licenses and registrations to be then reinstated or issued to such person. ~~All~~ Such fees must ~~shall~~ be deposited to a department trust fund. If ~~When~~ the reinstatement of any license or registration is effected by compliance with s. 324.051(2)(a)3. or 4., the department may ~~shall~~ not renew the license or registration within ~~a period of~~ 3 years after ~~from~~ such reinstatement, nor may ~~shall~~ any other license or registration be issued in the name of such person, unless the operator continues ~~is continuing~~ to comply with ~~one of the provisions of~~ s. 324.031.

Section 21. Subsection (1) of section 324.091, Florida Statutes, is amended to read:

324.091 Notice to department; notice to insurer.—

(1) Each owner and operator involved in a crash or conviction case within the purview of this chapter shall furnish evidence of ~~automobile liability insurance or~~ motor vehicle liability insurance within 14 days after the date of the mailing

of notice of crash by the department in the form and manner as it may designate. Upon receipt of evidence that a ~~an automobile liability policy or~~ motor vehicle liability policy was in effect at the time of the crash or conviction case, the department shall forward to the insurer such information for verification in a method as determined by the department. The insurer shall respond to the department within 20 days after the notice as to whether ~~or not~~ such information is valid. If the department determines that a ~~an automobile liability policy or~~ motor vehicle liability policy was not in effect and did not provide coverage for both the owner and the operator, it must ~~shall~~ take action as it is authorized to do under this chapter.

Section 22. Section 324.151, Florida Statutes, is amended to read:

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy that serves as ~~to be~~ proof of financial responsibility under s. 324.031(1)(a) must ~~s. 324.031(1), shall~~ be issued to owners or operators of motor vehicles under the following provisions:

(a) A motor vehicle ~~An owner's~~ liability insurance policy issued to an owner of a motor vehicle required to be registered in this state must ~~shall~~ designate by explicit description or by appropriate reference all motor vehicles for ~~with respect to~~ which coverage is thereby granted. The policy must ~~and shall~~

insure the person or persons ~~owner~~ named therein and, except for a named driver excluded pursuant to s. 627.747, must insure any resident relative of a named insured ~~other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss~~ from the liability imposed by law for damage arising out of the ownership, maintenance, or use of any ~~such~~ motor vehicle ~~or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7)~~. Except for a named driver excluded pursuant to s. 627.747, the policy must also insure any person operating an insured motor vehicle with the express or implied permission of a named insured against loss from the liability imposed by law for damage arising out of the use of the insured vehicle. However, the insurer may include provisions in its policy excluding liability coverage for a motor vehicle not designated as an insured vehicle on the policy if such motor vehicle does not qualify as a newly acquired vehicle, does not qualify as a temporary substitute vehicle, and was owned by the insured or was furnished for an insured's regular use for more than 30 consecutive days before the event giving rise to the claim. Insurers may make available, with respect to property damage liability coverage, a deductible amount not to exceed $500. In the event of a property damage loss covered by a policy

containing a property damage deductible provision, the insurer shall pay to the third-party claimant the amount of any property damage liability settlement or judgment, subject to policy limits, as if no deductible existed.

(b) A motor vehicle liability insurance policy issued to a person who does not own a motor vehicle must ~~An operator's motor vehicle liability policy of insurance shall~~ insure the person or persons named therein against loss from the liability imposed ~~upon him or her~~ by law for damages arising out of the use ~~by the person~~ of any motor vehicle not owned by him or her~~, with the same territorial limits and subject to the same limits of liability as referred to above with respect to an owner's policy of liability insurance~~.

(c) All such motor vehicle liability policies must provide liability coverage with limits, exclusive of interest and costs, as specified under s. 324.021(7) for accidents occurring within the United States or Canada. The policies must ~~shall~~ state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and must ~~shall~~ contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter ~~as respects bodily injury and death or property damage or both~~ and is subject to ~~all provisions of~~ this chapter. The ~~Said~~ policies must ~~shall~~ also contain a provision that the satisfaction by an insured of a

judgment for such injury or damage may ~~shall~~ not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage, and must ~~shall~~ also contain a provision that bankruptcy or insolvency of the insured or of the insured's estate may ~~shall~~ not relieve the insurance carrier of any of its obligations under the ~~said~~ policy.

(2) ~~The provisions of~~ This section is ~~shall~~ not ~~be~~ applicable to any motor vehicle ~~automobile~~ liability policy unless and until it is furnished as proof of financial responsibility for the future pursuant to s. 324.031, and then applies only from ~~and after~~ the date the ~~said~~ policy is ~~so~~ furnished.

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

(a) "Newly acquired vehicle" means a vehicle owned by a named insured or resident relative of the named insured which was acquired within 30 days before an accident.

(b) "Resident relative" means a person related to a named insured by any degree by blood, marriage, or adoption, including a ward or foster child, who usually makes his or her home in the same family unit or residence as the named insured, whether or not he or she temporarily lives elsewhere.

(c) "Temporary substitute vehicle" means any motor vehicle as defined in s. 320.01(1) which is not owned by the named insured and which is temporarily used with the permission of the owner as a substitute for the owned motor vehicle designated on

the policy when the owned vehicle is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction.

Section 23. Section 324.161, Florida Statutes, is amended to read:

324.161 Proof of financial responsibility; deposit.—If a person elects to prove his or her financial responsibility under the method of proof specified in s. 324.031(1)(b), he or she annually must obtain and submit to the department proof of a certificate of deposit in the amount required under s. 324.031(2) from a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration ~~Annually, before any certificate of insurance may be issued to a person, including any firm, partnership, association, corporation, or other person, other than a natural person, proof of a certificate of deposit of $30,000 issued and held by a financial institution must be submitted to the department~~. A power of attorney will be issued to and held by the department and may be executed upon a judgment issued against such person making the deposit, for damages for ~~because of~~ bodily injury to or death of any person or for damages for ~~because of~~ injury to or destruction of property resulting from the use or operation of any motor vehicle occurring after such deposit was made. Money so deposited is ~~shall~~ not ~~be~~ subject to attachment or execution unless such attachment or execution arises ~~shall arise~~ out of a lawsuit ~~suit~~ for such damages ~~as~~

~~aforesaid~~.

Section 24. Subsections (1) and (2) of section 324.171, Florida Statutes, are amended to read:

324.171 Self-insurer.—

(1) A ~~Any~~ person may qualify as a self-insurer by obtaining a certificate of self-insurance from the department. ~~which may, in its discretion and~~ Upon application of such a person, the department may issue a ~~said~~ certificate of self-insurance to an applicant who satisfies ~~when such person has satisfied~~ the requirements of this section. Effective January 1, 2021 ~~to qualify as a self-insurer under this section~~:

(a) A private individual with private passenger vehicles shall possess a net unencumbered worth of at least $100,000 ~~$40,000~~.

(b) A person, including any firm, partnership, association, corporation, or other person, other than a natural person, shall:

1. Possess a net unencumbered worth of at least $100,000 ~~$40,000~~ for the first motor vehicle and $50,000 ~~$20,000~~ for each additional motor vehicle; or

2. Maintain sufficient net worth, in an amount determined by the department, to be financially responsible for potential losses. The department annually shall determine the minimum net worth sufficient to satisfy this subparagraph ~~as determined annually by the department,~~ pursuant to rules adopted

~~promulgated~~ by the department~~,~~ with the assistance of the Office of Insurance Regulation of the Financial Services Commission~~, to be financially responsible for potential losses~~. The rules must consider any ~~shall take into consideration~~ excess insurance carried by the applicant. The department's determination must ~~shall~~ be based upon reasonable actuarial principles considering the frequency, severity, and loss development of claims incurred by casualty insurers writing coverage on the type of motor vehicles for which a certificate of self-insurance is desired.

(c) The owner of a commercial motor vehicle, as defined in s. 207.002 or s. 320.01, may qualify as a self-insurer subject to the standards provided ~~for~~ in subparagraph (b)2.

(2) The self-insurance certificate must ~~shall~~ provide limits of liability insurance in the amounts specified under s. 324.021(7) ~~or s. 627.7415 and shall provide personal injury protection coverage under s. 627.733(3)(b)~~.

Section 25. Section 324.251, Florida Statutes, is amended to read:

324.251 Short title.—This chapter may be cited as the "Financial Responsibility Law of 2020 ~~1955~~" and is ~~shall become~~ effective at 12:01 a.m., January 1, 2021 ~~October 1, 1955~~.

Section 26. Subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4)(a) "Clinic" means an entity where health care services

are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

1.~~(a)~~ Entities licensed or registered by the state under chapter 395; entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses under ss. 383.30-383.332, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; providers certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services or other health care services by licensed practitioners solely within a hospital licensed under chapter 395.

2.~~(b)~~ Entities that own, directly or indirectly, entities licensed or registered by the state pursuant to chapter 395; entities that own, directly or indirectly, entities licensed or registered by the state and providing only health care services

within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.332, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; providers certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

3.~~(c)~~ Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 395; entities that are owned, directly or indirectly, by an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.332, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; providers certified by the Centers for Medicare and

Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital under chapter 395.

4.~~(d)~~ Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 395; entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.332, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; providers certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

5.~~(e)~~ An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan

under 26 U.S.C. s. 409 that has a board of trustees at least two-thirds of which are Florida-licensed health care practitioners and provides only physical therapy services under physician orders, any community college or university clinic, and any entity owned or operated by the federal or state government, including agencies, subdivisions, or municipalities thereof.

6.~~(f)~~ A sole proprietorship, group practice, partnership, or corporation that provides health care services by physicians covered by s. 627.419, that is directly supervised by one or more of such physicians, and that is wholly owned by one or more of those physicians or by a physician and the spouse, parent, child, or sibling of that physician.

7.~~(g)~~ A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 480, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, and that is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in this subparagraph ~~paragraph~~ and the spouse, parent, child, or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising the

business activities and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

8.~~(h)~~ Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

9.~~(i)~~ Entities that provide only oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 or entities that provide oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 which are owned by a corporation whose shares are publicly traded on a recognized stock exchange.

10.~~(j)~~ Clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

11.~~(k)~~ Entities that provide licensed practitioners to staff emergency departments or to deliver anesthesia services in facilities licensed under chapter 395 and that derive at least 90 percent of their gross annual revenues from the provision of such services. Entities claiming an exemption from licensure

under this subparagraph ~~paragraph~~ must provide documentation demonstrating compliance.

12.~~(l)~~ Orthotic, prosthetic, pediatric cardiology, or perinatology clinical facilities or anesthesia clinical facilities that are not otherwise exempt under subparagraph 1. or subparagraph 11. ~~paragraph (a) or paragraph (k)~~ and that are a publicly traded corporation or are wholly owned, directly or indirectly, by a publicly traded corporation. As used in this subparagraph ~~paragraph~~, a publicly traded corporation is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

13.~~(m)~~ Entities that are owned by a corporation that has $250 million or more in total annual sales of health care services provided by licensed health care practitioners where one or more of the persons responsible for the operations of the entity is a health care practitioner who is licensed in this state and who is responsible for supervising the business activities of the entity and is responsible for the entity's compliance with state law for purposes of this part.

14.~~(n)~~ Entities that employ 50 or more licensed health care practitioners licensed under chapter 458 or chapter 459 where the billing for medical services is under a single tax identification number. The application for exemption under this subsection must include ~~shall contain information that includes:~~

the name, residence, and business address and telephone ~~phone~~ number of the entity that owns the practice; a complete list of the names and contact information of all the officers and directors of the corporation; the name, residence address, business address, and medical license number of each licensed Florida health care practitioner employed by the entity; the corporate tax identification number of the entity seeking an exemption; a listing of health care services to be provided by the entity at the health care clinics owned or operated by the entity; and a certified statement prepared by an independent certified public accountant which states that the entity and the health care clinics owned or operated by the entity have not received payment for health care services under medical payments ~~personal injury protection~~ insurance coverage for the preceding year. If the agency determines that an entity that ~~which~~ is exempt under this subsection has received payments for medical services under medical payments ~~personal injury protection~~ insurance coverage, the agency may deny or revoke the exemption from licensure under this subsection.

(b) Notwithstanding paragraph (a) ~~this subsection~~, an entity is ~~shall be~~ deemed a clinic and must be licensed under this part in order to receive medical payments coverage reimbursement under s. 627.7265 unless the entity is: ~~the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h).~~

1. Wholly owned by a physician licensed under chapter 458 or chapter 459, or by the physician and the spouse, parent, child, or sibling of the physician;

2. Wholly owned by a dentist licensed under chapter 466, or by the dentist and the spouse, parent, child, or sibling of the dentist;

3. Wholly owned by a chiropractic physician licensed under chapter 460, or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician;

4. A hospital or ambulatory surgical center licensed under chapter 395;

5. An entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under chapter 395;

6. A clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

7. Certified under 42 C.F.R. part 485, subpart H; or

8. Owned by a publicly traded corporation, either directly or indirectly through its subsidiaries, which has $250 million or more in total annual sales of health care services provided by licensed health care practitioners, if one or more of the persons responsible for the operations of the entity are health care practitioners who are licensed in this state and are responsible for supervising the business activities of the

entity and the entity's compliance with state law for purposes of this subsection.

Section 27. Subsection (5) of section 400.991, Florida Statutes, is amended to read:

400.991 License requirements; background screenings; prohibitions.—

(5) All agency forms for licensure application or exemption from licensure under this part must contain the following statement:

INSURANCE FRAUD NOTICE.—A person commits a fraudulent insurance act, as defined in s. 626.989, Florida Statutes, if the person ~~who~~ knowingly submits a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400, Florida Statutes, with the intent to use the license, exemption from licensure, or demonstration of compliance to provide services or seek reimbursement under a motor vehicle liability insurance policy's medical payments coverage ~~the Florida Motor Vehicle No-Fault Law, commits a fraudulent insurance act, as defined in s. 626.989, Florida Statutes~~. A person who presents a claim for

benefits under medical payments coverage, ~~personal injury protection benefits~~ knowing that the payee knowingly submitted such health care clinic application or document, commits insurance fraud, as defined in s. 817.234, Florida Statutes.

Section 28. Paragraph (g) of subsection (1) of section 400.9935, Florida Statutes, is amended to read:

400.9935 Clinic responsibilities.—

(1) Each clinic shall appoint a medical director or clinic director who shall agree in writing to accept legal responsibility for the following activities on behalf of the clinic. The medical director or the clinic director shall:

(g) Conduct systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful. Upon discovery of an unlawful charge, the medical director or clinic director shall take immediate corrective action. If the clinic performs only the technical component of magnetic resonance imaging, static radiographs, computed tomography, or positron emission tomography, and provides the professional interpretation of such services, in a fixed facility that is accredited by a national accrediting organization that is approved by the Centers for Medicare and Medicaid Services for magnetic resonance imaging and advanced diagnostic imaging services and if, in the preceding quarter, the percentage of scans performed by that clinic which was billed to motor vehicle

~~all personal injury protection~~ insurance carriers under medical payments coverage was less than 15 percent, the chief financial officer of the clinic may, in a written acknowledgment provided to the agency, assume the responsibility for the conduct of the systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful.

Section 29. Subsection (28) of section 409.901, Florida Statutes, is amended to read:

409.901 Definitions; ss. 409.901-409.920.—As used in ss. 409.901-409.920, except as otherwise specifically provided, the term:

(28) "Third-party benefit" means any benefit that is or may be available at any time through contract, court award, judgment, settlement, agreement, or any arrangement between a third party and any person or entity, including, without limitation, a Medicaid recipient, a provider, another third party, an insurer, or the agency, for any Medicaid-covered injury, illness, goods, or services, including costs of medical services related thereto, for bodily ~~personal~~ injury or for death of the recipient, but specifically excluding ~~policies of~~ life insurance policies on the recipient, unless available under terms of the policy to pay medical expenses before ~~prior to~~ death. The term includes, without limitation, collateral, as defined in this section;~~,~~ health insurance;~~,~~ any benefit under a health maintenance organization, a preferred provider

arrangement, a prepaid health clinic, liability insurance, uninsured motorist insurance, or medical payments coverage; or ~~personal injury protection coverage,~~ medical benefits under workers' compensation, and any obligation under law or equity to provide medical support.

Section 30. Paragraph (f) of subsection (11) of section 409.910, Florida Statutes, is amended to read:

409.910 Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—

(11) The agency may, as a matter of right, in order to enforce its rights under this section, institute, intervene in, or join any legal or administrative proceeding in its own name in one or more of the following capacities: individually, as subrogee of the recipient, as assignee of the recipient, or as lienholder of the collateral.

(f) Notwithstanding any provision in this section to the contrary, in the event of an action in tort against a third party in which the recipient or his or her legal representative is a party which results in a judgment, award, or settlement from a third party, the amount recovered shall be distributed as follows:

1. After attorney ~~attorney's~~ fees and taxable costs as defined by the Florida Rules of Civil Procedure, one-half of the remaining recovery shall be paid to the agency up to the total amount of medical assistance provided by Medicaid.

2. The remaining amount of the recovery shall be paid to the recipient.

3. For purposes of calculating the agency's recovery of medical assistance benefits paid, the fee for services of an attorney retained by the recipient or his or her legal representative shall be calculated at 25 percent of the judgment, award, or settlement.

4. Notwithstanding any other provision of this section to the contrary, the agency shall be entitled to all medical coverage benefits up to the total amount of medical assistance provided by Medicaid. For purposes of this paragraph, the term "medical coverage" means any benefits under health insurance, a health maintenance organization, a preferred provider arrangement, or a prepaid health clinic, and the portion of benefits designated for medical payments under ~~coverage for~~ workers' compensation coverage, motor vehicle insurance coverage, ~~personal injury protection,~~ and casualty coverage.

Section 31. Paragraph (k) of subsection (2) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information.—

(2) As used in this section, the terms "records owner," "health care practitioner," and "health care practitioner's employer" do not include any of the following persons or

entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or chapter under which they are licensed or regulated:

(k) Persons or entities practicing under s. 627.7265 ~~s. 627.736(7)~~.

Section 32. Paragraphs (ee) and (ff) of subsection (1) of section 456.072, Florida Statutes, are amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(ee) With respect to making a medical payments coverage ~~personal injury protection~~ claim under s. 627.7265 ~~as required by s. 627.736~~, intentionally submitting a claim, statement, or bill that has been upcoded. As used in this paragraph, the term "upcoded" means an action that submits a billing code that would result in a greater payment amount than would be paid using a billing code that accurately describes the services performed. The term does not include an otherwise lawful bill by a magnetic resonance imaging facility, which globally combines both technical and professional components, if the amount of the global bill is not more than the components if billed separately; however, payment of such a bill constitutes payment

in full for all components of such service ~~"upcoded" as defined in s. 627.732~~.

(ff) With respect to making a medical payments coverage ~~personal injury protection~~ claim as required under s. 627.7265 ~~by s. 627.736~~, intentionally submitting a claim, statement, or bill for payment of services that were not rendered.

Section 33. Paragraphs (i) and (o) of subsection (1) of section 626.9541, Florida Statutes, are amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(i) *Unfair claim settlement practices.*—

1. Attempting to settle claims on the basis of an application, when serving as a binder or intended to become a part of the policy, or any other material document which was altered without notice to, or knowledge or consent of, the insured;

2. A material misrepresentation made to an insured or any other person having an interest in the proceeds payable under such contract or policy, for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract or policy on less favorable terms than those provided in, and contemplated by, such contract or policy; ~~or~~

3. Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Failing to adopt and implement standards for the proper investigation of claims;

b. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

c. Failing to acknowledge and act promptly upon communications with respect to claims;

d. Denying claims without conducting reasonable investigations based upon available information;

e. Failing to affirm or deny full or partial coverage of claims, and, as to partial coverage, the dollar amount or extent of coverage, or failing to provide a written statement that the claim is being investigated, upon the written request of the insured within 30 days after proof-of-loss statements have been completed;

f. Failing to promptly provide a reasonable explanation in writing to the insured of the basis in the insurance policy, in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement;

g. Failing to promptly notify the insured of any additional information necessary for the processing of a claim; or

h. Failing to clearly explain the nature of the requested information and the reasons why such information is necessary.

~~i. Failing to pay personal injury protection insurance claims within the time periods required by s. 627.736(4)(b). The office may order the insurer to pay restitution to a policyholder, medical provider, or other claimant, including interest at a rate consistent with the amount set forth in s. 55.03(1), for the time period within which an insurer fails to pay claims as required by law. Restitution is in addition to any other penalties allowed by law, including, but not limited to, the suspension of the insurer's certificate of authority.~~

4. Failing to pay undisputed amounts of partial or full benefits owed under first-party property insurance policies within 90 days after an insurer receives notice of a residential property insurance claim, determines the amounts of partial or full benefits, and agrees to coverage, unless payment of the undisputed benefits is prevented by an act of God, prevented by the impossibility of performance, or due to actions by the insured or claimant that constitute fraud, lack of cooperation, or intentional misrepresentation regarding the claim for which benefits are owed.

(o) *Illegal dealings in premiums; excess or reduced charges for insurance.*—

1. Knowingly collecting any sum as a premium or charge for insurance, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as

permitted by this code.

2. Knowingly collecting as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the office, and as specified in the policy; or, in cases when classifications, premiums, or rates are not required by this code to be so filed and approved, premiums and charges collected from a Florida resident in excess of or less than those specified in the policy and as fixed by the insurer. Notwithstanding any other provision of law, this provision shall not be deemed to prohibit the charging and collection, by surplus lines agents licensed under part VIII of this chapter, of the amount of applicable state and federal taxes, or fees as authorized by s. 626.916(4), in addition to the premium required by the insurer or the charging and collection, by licensed agents, of the exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer. This subparagraph shall not be construed to prohibit collection of a premium for a universal life or a variable or indeterminate value insurance policy made in accordance with the terms of the contract.

3.a. Imposing or requesting an additional premium for bodily injury liability coverage, property damage liability

coverage ~~a policy of motor vehicle liability, personal injury protection~~, medical payments coverage ~~payment~~, or collision coverage in a motor vehicle liability insurance policy ~~insurance or any combination thereof~~ or refusing to renew the policy solely because the insured was involved in a motor vehicle accident unless the insurer's file contains information from which the insurer in good faith determines that the insured was substantially at fault in the accident.

b. An insurer which imposes and collects such a surcharge or which refuses to renew such policy shall, in conjunction with the notice of premium due or notice of nonrenewal, notify the named insured that he or she is entitled to reimbursement of such amount or renewal of the policy under the conditions listed below and will subsequently reimburse him or her or renew the policy, if the named insured demonstrates that the operator involved in the accident was:

(I) Lawfully parked;

(II) Reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person;

(III) Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident;

(IV) Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within 24 hours after discovering the accident;

(V) Not convicted of a moving traffic violation in connection with the accident, but the operator of the other automobile involved in such accident was convicted of a moving traffic violation;

(VI) Finally adjudicated not to be liable by a court of competent jurisdiction;

(VII) In receipt of a traffic citation which was dismissed or nolle prossed; or

(VIII) Not at fault as evidenced by a written statement from the insured establishing facts demonstrating lack of fault which are not rebutted by information in the insurer's file from which the insurer in good faith determines that the insured was substantially at fault.

c. In addition to the other provisions of this subparagraph, an insurer may not fail to renew a policy if the insured has had only one accident in which he or she was at fault within the current 3-year period. However, an insurer may nonrenew a policy for reasons other than accidents in accordance with s. 627.728. This subparagraph does not prohibit nonrenewal of a policy under which the insured has had three or more accidents, regardless of fault, during the most recent 3-year period.

4. Imposing or requesting an additional premium for, or refusing to renew, a policy for motor vehicle insurance solely because the insured committed a noncriminal traffic infraction

as described in s. 318.14 unless the infraction is:

a. A second infraction committed within an 18-month period, or a third or subsequent infraction committed within a 36-month period.

b. A violation of s. 316.183, when such violation is a result of exceeding the lawful speed limit by more than 15 miles per hour.

5. Upon the request of the insured, the insurer and licensed agent shall supply to the insured the complete proof of fault or other criteria which justifies the additional charge or cancellation.

6. No insurer shall impose or request an additional premium for motor vehicle insurance, cancel or refuse to issue a policy, or refuse to renew a policy because the insured or the applicant is a handicapped or physically disabled person, so long as such handicap or physical disability does not substantially impair such person's mechanically assisted driving ability.

7. No insurer may cancel or otherwise terminate any insurance contract or coverage, or require execution of a consent to rate endorsement, during the stated policy term for the purpose of offering to issue, or issuing, a similar or identical contract or coverage to the same insured with the same exposure at a higher premium rate or continuing an existing contract or coverage with the same exposure at an increased

premium.

8. No insurer may issue a nonrenewal notice on any insurance contract or coverage, or require execution of a consent to rate endorsement, for the purpose of offering to issue, or issuing, a similar or identical contract or coverage to the same insured at a higher premium rate or continuing an existing contract or coverage at an increased premium without meeting any applicable notice requirements.

9. No insurer shall, with respect to premiums charged for motor vehicle insurance, unfairly discriminate solely on the basis of age, sex, marital status, or scholastic achievement.

10. Imposing or requesting an additional premium for motor vehicle comprehensive or uninsured motorist coverage solely because the insured was involved in a motor vehicle accident or was convicted of a moving traffic violation.

11. No insurer shall cancel or issue a nonrenewal notice on any insurance policy or contract without complying with any applicable cancellation or nonrenewal provision required under the Florida Insurance Code.

12. No insurer shall impose or request an additional premium, cancel a policy, or issue a nonrenewal notice on any insurance policy or contract because of any traffic infraction when adjudication has been withheld and no points have been assessed pursuant to s. 318.14(9) and (10). However, this subparagraph does not apply to traffic infractions involving

accidents in which the insurer has incurred a loss due to the fault of the insured.

Section 34. Paragraph (a) of subsection (1) of section 626.989, Florida Statutes, is amended to read:

626.989 Investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.—

(1) For the purposes of this section:

(a) A person commits a "fraudulent insurance act" if the person:

1. Knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, self-insurer, self-insurance fund, servicing corporation, purported insurer, broker, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a claim for payment or other benefit pursuant to any insurance policy, which the person knows to contain materially false information concerning any fact material thereto or if the person conceals, for the purpose of misleading another, information concerning any fact material thereto.

2. Knowingly submits:

a. A false, misleading, or fraudulent application or other

document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400 with an intent to use the license, exemption from licensure, or demonstration of compliance to provide services or seek reimbursement under a motor vehicle liability insurance policy's medical payments coverage ~~the Florida Motor Vehicle No-Fault Law~~.

b. A claim for payment or other benefit under medical payments coverage ~~pursuant to a personal injury protection insurance policy under the Florida Motor Vehicle No-Fault Law~~ if the person knows that the payee knowingly submitted a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400.

Section 35. Subsection (1) of section 627.06501, Florida Statutes, is amended to read:

627.06501 Insurance discounts for certain persons completing driver improvement course.—

(1) Any rate, rating schedule, or rating manual for the liability, medical payments ~~personal injury protection~~, and collision coverages of a motor vehicle insurance policy filed with the office may provide for an appropriate reduction in premium charges as to such coverages if ~~when~~ the principal

operator on the covered vehicle has successfully completed a driver improvement course approved and certified by the Department of Highway Safety and Motor Vehicles which is effective in reducing crash or violation rates, or both, as determined pursuant to s. 318.1451(5). Any discount, not to exceed 10 percent, used by an insurer is presumed to be appropriate unless credible data demonstrates otherwise.

Section 36. Subsection (15) is added to section 627.0651, Florida Statutes, to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(15) Initial rate filings for motor vehicle liability policies which are submitted to the office on or after January 1, 2021, must reflect the financial responsibility requirements in s. 324.022, as amended, and may be approved only through the file and use process under s. 627.0651(1)(a).

Section 37. Subsection (1) of section 627.0652, Florida Statutes, is amended to read:

627.0652 Insurance discounts for certain persons completing safety course.—

(1) Any rates, rating schedules, or rating manuals for the liability, medical payments ~~personal injury protection~~, and collision coverages of a motor vehicle insurance policy filed with the office must ~~shall~~ provide for an appropriate reduction in premium charges as to such coverages if ~~when~~ the principal

operator on the covered vehicle is an insured 55 years of age or older who has successfully completed a motor vehicle accident prevention course approved by the Department of Highway Safety and Motor Vehicles. Any discount used by an insurer is presumed to be appropriate unless credible data demonstrates otherwise.

Section 38. Subsections (1), (3), and (6) of section 627.0653, Florida Statutes, are amended to read:

627.0653 Insurance discounts for specified motor vehicle equipment.—

(1) Any rates, rating schedules, or rating manuals for the liability, medical payments ~~personal injury protection~~, and collision coverages of a motor vehicle insurance policy filed with the office must ~~shall~~ provide a premium discount if the insured vehicle is equipped with factory-installed, four-wheel antilock brakes.

(3) Any rates, rating schedules, or rating manuals for ~~personal injury protection coverage and~~ medical payments coverage~~, if offered,~~ of a motor vehicle insurance policy filed with the office must ~~shall~~ provide a premium discount if the insured vehicle is equipped with one or more air bags that ~~which~~ are factory installed.

(6) The Office of Insurance Regulation may approve a premium discount to any rates, rating schedules, or rating manuals for the liability, medical payments ~~personal injury protection~~, and collision coverages of a motor vehicle insurance

policy filed with the office if the insured vehicle is equipped with an automated driving system or electronic vehicle collision avoidance technology that is factory installed or a retrofitted system and that complies with National Highway Traffic Safety Administration standards.

Section 39. Section 627.4132, Florida Statutes, is amended to read:

627.4132 Stacking of coverages prohibited.—If an insured or named insured is protected by any type of motor vehicle insurance policy for bodily injury and property damage liability~~, personal injury protection, or other coverage~~, the policy must ~~shall~~ provide that the insured or named insured is protected only to the extent of the coverage she or he has on the vehicle involved in the accident. However, if none of the insured's or named insured's vehicles are ~~is~~ involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicles may ~~shall~~ not be added to or stacked upon that coverage. This section does not apply:

(1) To uninsured motorist coverage that ~~which~~ is separately governed by s. 627.727.

(2) To reduce the coverage available by reason of insurance policies insuring different named insureds.

Section 40. Section 627.7263, Florida Statutes, is amended to read:

627.7263 Rental and leasing driver's insurance to be primary; exception.—

(1) The valid and collectible liability insurance and medical payments coverage ~~or personal injury protection insurance providing coverage~~ for the lessor of a motor vehicle for rent or lease is primary unless otherwise stated in at least 10-point type on the face of the rental or lease agreement. Such insurance is primary for the limits of liability ~~and personal injury protection~~ coverage as required by s. 324.021(7) and the medical payments coverage limit specified under s. 627.7265 ~~ss. 324.021(7) and 627.736~~.

(2) If the lessee's coverage is to be primary, the rental or lease agreement must contain the following language, in at least 10-point type:

"The valid and collectible liability insurance and medical payments coverage ~~personal injury protection insurance~~ of an ~~any~~ authorized rental or leasing driver is primary for the limits of liability ~~and personal injury protection~~ coverage required under section 324.021(7), Florida Statutes, and the medical payments coverage limit specified under section 627.7265 ~~by ss. 324.021(7) and 627.736~~, Florida Statutes."

Section 41. Section 627.7265, Florida Statutes, is created

to read:

627.7265 Motor vehicle insurance; medical payments coverage.—

(1) Medical payments coverage must protect the named insured, resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle at a limit of at least $5,000 for medical expense incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle. The coverage must provide an additional death benefit of at least $5,000.

(a) Before issuing a motor vehicle liability insurance policy that is furnished as proof of financial responsibility under s. 324.031, the insurer must offer medical payments coverage at limits of $5,000 and $10,000. The insurer may also offer medical payments coverage at any limit greater than $5,000.

(b) The medical payments coverage must be offered with an option with no deductible. The insurer may also offer medical payments coverage with a deductible not to exceed $500.

(c) Each motor vehicle liability insurance policy that is furnished as proof of financial responsibility under s. 324.031 is deemed to have:

1. Medical payments coverage to a limit of $10,000, unless

the insurer obtains the policyholder's written refusal of medical payments coverage or written selection of medical payments coverage at a limit other than $10,000. The rejection or selection of coverage at a limit other than $10,000 must be made on a form approved by the office.

2. No medical payments coverage deductible, unless the insurer obtains the policyholder's written selection of a deductible of up to $500. The selection of a deductible must be made on a form approved by the office.

(d)1. The forms in subparagraphs (c)1. and 2. must fully advise the applicant of the nature of the coverage being rejected or the policy limit or deductible being selected. If the form is signed by a named insured, it is conclusively presumed that there was an informed, knowing rejection of the coverage or election of the policy limit or deductible selected.

2. Unless the policyholder requests in writing the coverage specified in this section, it need not be provided in or supplemental to any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy if the policyholder has rejected the coverage specified in this section or has selected an alternative coverage limit or deductible. At least annually, the insurer shall provide the policyholder with a notice of the availability of such coverage in a form approved by the office. The notice must be part of, and attached to, the notice of premium and must provide for a

means to allow the insured to request medical payments coverage at the limits and deductibles required to be offered under this section. The notice must be given in a manner approved by the office. Receipt of this notice does not constitute an affirmative waiver of the insured's right to medical payments coverage if the insured has not signed a selection or rejection form.

(e) This section may not be construed to limit any other coverage made available by an insurer.

(2) Upon receiving notice of an accident that is potentially covered by medical payments coverage benefits, the insurer must reserve $5,000 of medical payments coverage benefits for payment to physicians licensed under chapter 458 or chapter 459 or dentists licensed under chapter 466 who provide emergency services and care, as defined in s. 395.002, or who provide hospital inpatient care. The amount required to be held in reserve may be used only to pay claims from such physicians or dentists until 30 days after the date the insurer receives notice of the accident. After the 30-day period, any amount of the reserve for which the insurer has not received notice of such claims may be used by the insurer to pay other claims. This subsection does not require an insurer to establish a claim reserve for insurance accounting purposes.

(3) An insurer providing medical payments coverage benefits may not have a:

(a) Lien on any recovery in tort by judgment, settlement, or otherwise for medical payments coverage benefits, whether suit has been filed or settlement has been reached without suit; or

(b) Cause of action against a person to whom or for whom medical payments coverage benefits were paid, except when medical payments coverage benefits are paid by reason of fraud the person commits.

(4) An insurer providing medical payments coverage may include provisions in its policy allowing for subrogation for medical payments benefits paid if the expenses giving rise to the payments were caused by the wrongful act or omission of another who is not also an insured under the policy paying the medical payments benefits. However, this subrogation right is inferior to the rights of the injured insured and is available only after all the insured's damages are recovered and the insured is made whole. An insured who obtains a recovery from a third party of the full amount of the damages sustained and delivers a release or satisfaction that impairs a medical payments insurer's subrogation right is liable to the insurer for repayment of medical payments benefits less any expenses of acquiring the recovery, including a prorated share of attorney fees and costs, and shall hold that net recovery in trust to be delivered to the medical payments insurer. The insurer may not include any provision in its policy allowing for subrogation for

any death benefit paid.

Section 42. Subsections (1) and (7) of section 627.727, Florida Statutes, are amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(1) A ~~No~~ motor vehicle liability insurance policy that ~~which~~ provides bodily injury liability coverage may not ~~shall~~ be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state, unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. However, the coverage required under this section is not applicable if ~~when~~, or to the extent that, an insured named in the policy makes a written rejection of the coverage on behalf of all insureds under the policy. If ~~When~~ a motor vehicle is leased for ~~a period of~~ 1 year or longer and the lessor of such vehicle, by the terms of the lease contract, provides liability coverage on the leased vehicle, the lessee of such vehicle has ~~shall have~~ the sole privilege to reject uninsured motorist coverage or to select lower limits than the bodily injury liability limits, regardless of whether the lessor is qualified as a self-insurer pursuant to

s. 324.171. Unless an insured, or a lessee having the privilege of rejecting uninsured motorist coverage, requests such coverage or requests higher uninsured motorist limits in writing, the coverage or such higher uninsured motorist limits need not be provided in or supplemental to any other policy that ~~which~~ renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits when an insured or lessee had rejected the coverage. When an insured or lessee has initially selected limits of uninsured motorist coverage lower than her or his bodily injury liability limits, higher limits of uninsured motorist coverage need not be provided in or supplemental to any other policy that ~~which~~ renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits unless an insured requests higher uninsured motorist coverage in writing. The rejection or selection of lower limits must ~~shall~~ be made on a form approved by the office. The form must ~~shall~~ fully advise the applicant of the nature of the coverage and must ~~shall~~ state that the coverage is equal to bodily injury liability limits unless lower limits are requested or the coverage is rejected. The heading of the form must ~~shall~~ be in 12-point bold type and must ~~shall~~ state: "You are electing not to purchase certain valuable coverage that ~~which~~ protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read

carefully." If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of coverage or election of lower limits on behalf of all insureds. The insurer shall notify the named insured at least annually of her or his options as to the coverage required by this section. Such notice must ~~shall~~ be part of, and attached to, the notice of premium, must ~~shall~~ provide for a means to allow the insured to request such coverage, and must ~~shall~~ be given in a manner approved by the office. Receipt of this notice does not constitute an affirmative waiver of the insured's right to uninsured motorist coverage if ~~where~~ the insured has not signed a selection or rejection form. The coverage described under this section must ~~shall~~ be over and above, but may ~~shall~~ not duplicate, the benefits available to an insured under any workers' compensation law, ~~personal injury protection benefits,~~ disability benefits law, or similar law; under any automobile medical payments ~~expense~~ coverage; under any motor vehicle liability insurance coverage; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident, ~~;~~ and such coverage must ~~shall~~ cover the difference, if any, between the sum of such benefits and the damages sustained, up to the maximum amount of such coverage provided under this section. The amount of coverage available under this section may ~~shall~~ not be reduced by a setoff against

any coverage, including liability insurance. Such coverage does ~~shall~~ not inure directly or indirectly to the benefit of any workers' compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or similar law.

(7) The legal liability of an uninsured motorist coverage insurer includes ~~does not include~~ damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, ~~and~~ inconvenience, and the loss of capacity for the enjoyment of life experienced in the past and to be experienced in the future ~~unless the injury or disease is described in one or more of paragraphs (a)-(d) of s. 627.737(2)~~.

Section 43. Subsection (1) and paragraphs (a) and (b) of subsection (2) of section 627.7275, Florida Statutes, are amended to read:

627.7275 Motor vehicle liability.—

(1) A motor vehicle insurance policy ~~providing personal injury protection as set forth in s. 627.736 may not be~~ delivered or issued for delivery in this state for a ~~with respect to any~~ specifically insured or identified motor vehicle registered or principally garaged in this state must provide bodily injury liability coverage and ~~unless the policy also provides coverage for~~ property damage liability coverage as required under ~~by~~ s. 324.022.

(2)(a) Insurers writing motor vehicle insurance in this

state shall make available, subject to the insurers' usual underwriting restrictions:

1. Coverage under policies as described in subsection (1) to an applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state if the driving privileges were revoked or suspended pursuant to s. 316.646 or s. 324.0221 due to the failure of the applicant to maintain required security.

2. Coverage under policies as described in subsection (1), which includes bodily injury ~~also provides~~ liability coverage and property damage liability coverage, ~~for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of the motor vehicle~~ in an amount not less than the minimum limits required under ~~described in~~ s. 324.021(7) or s. 324.023 and which conforms to the requirements of s. 324.151, to an applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state after such privileges were revoked or suspended under s. 316.193 or s. 322.26(2) for driving under the influence.

(b) The policies described in paragraph (a) must ~~shall~~ be issued for at least 6 months and, as to the minimum coverages required under this section, may not be canceled by the insured for any reason or by the insurer after 60 days, during which

period the insurer is completing the underwriting of the policy. After the insurer has completed underwriting the policy, the insurer shall notify the Department of Highway Safety and Motor Vehicles that the policy is in full force and effect and is not cancelable for the remainder of the policy period. A premium must ~~shall~~ be collected and the coverage is in effect for the 60-day period during which the insurer is completing the underwriting of the policy, whether or not the person's driver license, motor vehicle tag, and motor vehicle registration are in effect. Once the noncancelable provisions of the policy become effective, the bodily injury liability and property damage liability coverages ~~for bodily injury, property damage, and personal injury protection~~ may not be reduced below the minimum limits required under s. 324.021 or s. 324.023 during the policy period.

Section 44. Effective upon this act becoming a law, section 627.7278, Florida Statutes, is created to read:

627.7278 Applicability and construction; notice to policyholders.—

(1) As used in this section, the term "minimum security requirements" means security that enables a person to respond in damages for liability on account of crashes arising out of the ownership, maintenance, or use of a motor vehicle, in the amounts required by s. 324.021(7).

(2) Effective January 1, 2021:

(a) Motor vehicle insurance policies issued or renewed on or after that date may not include personal injury protection.

(b) All persons subject to s. 324.022, s. 324.032, s. 627.7415, or s. 627.742 must maintain at least minimum security requirements.

(c) Any new or renewal motor vehicle insurance policy delivered or issued for delivery in this state must provide coverage that complies with minimum security requirements.

(d) An existing motor vehicle insurance policy issued before January 1, 2021, that provides personal injury protection and property damage liability coverage which meets the requirements of s. 324.022 on December 31, 2020, but which does not meet minimum security requirements on or after January 1, 2021, is deemed to meet the security requirements of s. 324.022 until such policy is renewed, nonrenewed, or canceled on or after January 1, 2021. Sections 400.9905, 400.991, 456.057, 456.072, 626.9541(1)(i), 627.7263, 627.727, 627.730-627.7405, 627.748, and 817.234, Florida Statutes 2019, remain in full force and effect for motor vehicle accidents covered under a policy issued under the Florida Motor Vehicle No-Fault Law before January 1, 2021, until the policy is renewed, nonrenewed, or canceled on or after January 1, 2021.

(3) Each insurer shall allow each insured who has a new or renewal policy providing personal injury protection which becomes effective before January 1, 2021, and whose policy does

not meet minimum security requirements on or after January 1, 2021, to change coverages so as to eliminate personal injury protection and obtain coverage providing minimum security requirements, which shall be effective on or after January 1, 2021. The insurer is not required to provide coverage complying with minimum security requirements in such policies if the insured does not pay the required premium, if any, by January 1, 2021, or such later date as the insurer may allow. The insurer must also offer each insured medical payments coverage pursuant to s. 627.7265. Any reduction in the premium must be refunded by the insurer. The insurer may not impose on the insured an additional fee or charge that applies solely to a change in coverage; however, the insurer may charge an additional required premium that is actuarially indicated.

(4) By September 1, 2020, each motor vehicle insurer shall provide notice of this section to each motor vehicle policyholder who is subject to this section. The notice is subject to approval by the office and must clearly inform the policyholder that:

(a) The Florida Motor Vehicle No-Fault Law is repealed effective January 1, 2021, and that on or after that date, the insured is no longer required to maintain personal injury protection insurance coverage, that personal injury protection coverage is no longer available for purchase in this state, and that all new or renewal policies issued on or after that date

will not contain that coverage.

(b) Effective January 1, 2021, a person subject to the financial responsibility requirements of s. 324.022 must maintain minimum security requirements that enable the person to respond to damages for liability on account of accidents arising out of the use of a motor vehicle in the following amounts:

1. Twenty-five thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of $50,000 for bodily injury to, or the death of, two or more persons in any one crash; and

2. Ten thousand dollars for damage to, or destruction of, the property of others in any one crash.

(c) Bodily injury liability coverage protects the insured, up to the coverage limits, against loss if the insured is legally responsible for the death of or bodily injury to others in a motor vehicle accident.

(d) Effective January 1, 2021, each policyholder of motor vehicle liability insurance purchased as proof of financial responsibility must be offered medical payments coverage benefits that comply with s. 627.7265. The insurer must offer medical payments coverage at limits of $5,000 and $10,000 without a deductible. The insurer may also offer medical payments coverage at other limits greater than $5,000, and may offer coverage with a deductible of up to $500. Medical payments

coverage pays covered medical expenses incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of the motor vehicle, up to the limits of such coverage, for injuries sustained in a motor vehicle crash by the named insured, resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle as provided in s. 627.7265. Medical payments coverage also provides a death benefit of at least $5,000.

(e) The policyholder may obtain uninsured and underinsured motorist coverage, which provides benefits, up to the limits of such coverage, to a policyholder or other insured entitled to recover damages for bodily injury, sickness, disease, or death resulting from a motor vehicle accident with an uninsured or underinsured owner or operator of a motor vehicle.

(f) If the policyholder's new or renewal motor vehicle insurance policy is effective before January 1, 2021, and contains personal injury protection and property damage liability coverage as required by state law before January 1, 2021, but does not meet minimum security requirements on or after January 1, 2021, the policy is deemed to meet minimum security requirements until it is renewed, nonrenewed, or canceled on or after January 1, 2021.

(g) A policyholder whose new or renewal policy becomes

effective before January 1, 2021, but does not meet minimum security requirements on or after January 1, 2021, may change coverages under the policy so as to eliminate personal injury protection and to obtain coverage providing minimum security requirements, including bodily injury liability coverage, which are effective on or after January 1, 2021.

(h) If the policyholder has any questions, he or she should contact the person named at the telephone number provided in the notice.

Section 45. Paragraph (a) of subsection (1) of section 627.728, Florida Statutes, is amended to read:

627.728 Cancellations; nonrenewals.—

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

(a) "Policy" means the bodily injury and property damage liability, ~~personal injury protection,~~ medical payments, comprehensive, collision, and uninsured motorist coverage portions of a policy of motor vehicle insurance delivered or issued for delivery in this state:

1. Insuring a natural person as named insured or one or more related individuals who are residents ~~resident~~ of the same household; and

2. Insuring only a motor vehicle of the private passenger type or station wagon type which is not used as a public or livery conveyance for passengers or rented to others; or insuring any other four-wheel motor vehicle having a load

capacity of 1,500 pounds or less which is not used in the occupation, profession, or business of the insured other than farming; other than any policy issued under an automobile insurance assigned risk plan or covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

The term "policy" does not include a binder as defined in s. 627.420 unless the duration of the binder period exceeds 60 days.

Section 46. Subsection (1), paragraph (a) of subsection (5), and subsections (6) and (7) of section 627.7295, Florida Statutes, are amended to read:

627.7295 Motor vehicle insurance contracts.—

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

(a) "Policy" means a motor vehicle insurance policy that provides bodily injury liability ~~personal injury protection~~ coverage and~~,~~ property damage liability coverage~~, or both~~.

(b) "Binder" means a binder that provides motor vehicle bodily injury liability coverage ~~personal injury protection~~ and property damage liability coverage.

(5)(a) A licensed general lines agent may charge a per-policy fee of up to ~~not to exceed~~ $10 to cover the administrative costs of the agent associated with selling the motor vehicle insurance policy if the policy covers only bodily

injury liability coverage ~~personal injury protection coverage as provided by s. 627.736~~ and property damage liability coverage as provided by s. 627.7275 and if no other insurance is sold or issued in conjunction with or collateral to the policy. The fee is not ~~considered~~ part of the premium.

(6) If a motor vehicle owner's driver license, license plate, and registration have previously been suspended pursuant to s. 316.646 ~~or s. 627.733~~, an insurer may cancel a new policy only as provided in s. 627.7275.

(7) A policy of private passenger motor vehicle insurance or a binder for such a policy may be initially issued in this state only if, before the effective date of such binder or policy, the insurer or agent has collected from the insured an amount equal to at least 1 month's premium. An insurer, agent, or premium finance company may not, directly or indirectly, take any action that results ~~resulting~~ in the insured paying ~~having paid~~ from the insured's own funds an amount less than the 1 month's premium required by this subsection. This subsection applies without regard to whether the premium is financed by a premium finance company or is paid pursuant to a periodic payment plan of an insurer or an insurance agent.

(a) This subsection does not apply:

1. If an insured or member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer

group. ~~This subsection does not apply~~

2. To an insurer that issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents. ~~This subsection does not apply~~

3. If all policy payments are paid pursuant to a payroll deduction plan, an automatic electronic funds transfer payment plan from the policyholder, or a recurring credit card or debit card agreement with the insurer.

(b) This subsection and subsection (4) do not apply if:

1. All policy payments to an insurer are paid pursuant to an automatic electronic funds transfer payment plan from an agent, a managing general agent, or a premium finance company and if the policy includes, at a minimum, bodily injury liability coverage and ~~personal injury protection pursuant to ss. 627.730-627.7405; motor vehicle~~ property damage liability coverage pursuant to s. 627.7275; or ~~and bodily injury liability in at least the amount of $10,000 because of bodily injury to, or death of, one person in any one accident and in the amount of $20,000 because of bodily injury to, or death of, two or more persons in any one accident. This subsection and subsection (4) do not apply if~~

2. An insured has had a policy in effect for at least 6 months, the insured's agent is terminated by the insurer that issued the policy, and the insured obtains coverage on the policy's renewal date with a new company through the terminated

agent.

Section 47. Section 627.7415, Florida Statutes, is amended to read:

627.7415 Commercial motor vehicles; additional liability insurance coverage.—Beginning January 1, 2021, commercial motor vehicles, as defined in s. 207.002 or s. 320.01, operated upon the roads and highways of this state must ~~shall~~ be insured with the following minimum levels of combined bodily liability insurance and property damage liability insurance in addition to any other insurance requirements:

(1) Sixty ~~Fifty~~ thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds.

(2) One hundred twenty thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds.

(3) Three hundred thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 44,000 pounds or more.

(4) All commercial motor vehicles subject to regulations of the United States Department of Transportation, 49 C.F.R. part 387, subpart A, and as may be hereinafter amended, shall be insured in an amount equivalent to the minimum levels of financial responsibility as set forth in such regulations.

A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 48. Section 627.747, Florida Statutes, is created to read:

627.747 Named driver exclusion.—

(1) A private passenger motor vehicle policy may exclude an identified individual from the following coverages while the identified individual is operating a motor vehicle, provided that the identified individual is specifically excluded by name on the declarations page or by endorsement, and the policyholder consents in writing to the exclusion:

(a) Property damage liability coverage.

(b) Bodily injury liability coverage.

(c) Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has purchased such coverage.

(d) Any coverage the policyholder is not required by law to purchase.

(2) A private passenger motor vehicle policy may not exclude coverage when:

(a) The identified excluded individual is injured while not operating a motor vehicle;

(b) The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by the office; or

(c) The exclusion is inconsistent with the underwriting

rules filed by the insurer pursuant to s. 627.0651(13)(a).

Section 49. Paragraphs (b), (c), and (g) of subsection (7) and paragraphs (a) and (b) of subsection (8) of section 627.748, Florida Statutes, are amended to read:

627.748 Transportation network companies.—

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage; and

b. ~~Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and~~

~~c.~~ Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage; and

b. ~~Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and~~

~~c.~~ Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(g) Insurance satisfying the requirements under this subsection is deemed to satisfy the financial responsibility requirement for a motor vehicle under chapter 324 ~~and the security required under s. 627.733~~ for any period when the TNC driver is logged onto the digital network or engaged in a prearranged ride.

(8) TRANSPORTATION NETWORK COMPANY AND INSURER; DISCLOSURE; EXCLUSIONS.—

(a) Before a TNC driver is allowed to accept a request for a prearranged ride on the digital network, the TNC must disclose

in writing to the TNC driver:

1. The insurance coverage, including the types of coverage and the limits for each coverage, which the TNC provides while the TNC driver uses a TNC vehicle in connection with the TNC's digital network.

2. That the TNC driver's own automobile insurance policy might not provide any coverage while the TNC driver is logged on to the digital network or is engaged in a prearranged ride, depending on the terms of the TNC driver's own automobile insurance policy.

3. That the provision of rides for compensation which are not prearranged rides subjects the driver to the coverage requirements imposed under s. 324.032(1) and (2) and that failure to meet such coverage requirements subjects the TNC driver to penalties provided in s. 324.221, up to and including a misdemeanor of the second degree.

(b)1. An insurer that provides an automobile liability insurance policy under this part may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle while driving that vehicle for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. Exclusions imposed under this subsection are limited to coverage while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. This right to

exclude all coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

a. Liability coverage for bodily injury and property damage;

b. Uninsured and underinsured motorist coverage;

c. Medical payments coverage;

d. Comprehensive physical damage coverage; and

e. Collision physical damage coverage~~; and~~

~~f. Personal injury protection~~.

2. The exclusions described in subparagraph 1. apply notwithstanding any requirement under chapter 324. These exclusions do not affect or diminish coverage otherwise available for permissive drivers or resident relatives under the personal automobile insurance policy of the TNC driver or owner of the TNC vehicle who are not occupying the TNC vehicle at the time of loss. This section does not require that a personal automobile insurance policy provide coverage while the TNC driver is logged on to a digital network, while the TNC driver is engaged in a prearranged ride, or while the TNC driver otherwise uses a vehicle to transport riders for compensation.

3. This section must not be construed to require an insurer to use any particular policy language or reference to this section in order to exclude any and all coverage for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged

ride.

4. This section does not preclude an insurer from providing primary or excess coverage for the TNC driver's vehicle by contract or endorsement.

Section 50. Paragraph (a) of subsection (2) of section 627.749, Florida Statutes, is amended to read:

627.749 Autonomous vehicles; insurance requirements.—

(2) INSURANCE REQUIREMENTS.—

(a) A fully autonomous vehicle with the automated driving system engaged while logged on to an on-demand autonomous vehicle network or engaged in a prearranged ride must be covered by a policy of automobile insurance which provides:

1. Primary liability coverage of at least $1 million for death, bodily injury, and property damage.

2. ~~Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405.~~

~~3.~~ Uninsured and underinsured vehicle coverage as required by s. 627.727.

Section 51. Section 627.8405, Florida Statutes, is amended to read:

627.8405 Prohibited acts; financing companies.—A ~~No~~ premium finance company ~~shall~~, in a premium finance agreement or other agreement, may not finance the cost of or otherwise provide for the collection or remittance of dues, assessments, fees, or other periodic payments of money for the cost of:

(1) A membership in an automobile club. The term "automobile club" means a legal entity that ~~which~~, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use, or maintenance of a motor vehicle; however, the term ~~this definition of "automobile club"~~ does not include persons, associations, or corporations ~~which are~~ organized and operated solely for the purpose of conducting, sponsoring, or sanctioning motor vehicle races, exhibitions, or contests upon racetracks, or upon racecourses established and marked as such for the duration of such particular events. The term ~~words~~ "motor vehicle" used herein has ~~have~~ the same meaning as defined in chapter 320.

(2) An accidental death and dismemberment policy sold in combination with a policy providing only bodily injury liability coverage ~~personal injury protection~~ and property damage liability coverage ~~only policy~~.

(3) Any product not regulated under ~~the provisions of~~ this insurance code.

This section also applies to premium financing by any insurance agent or insurance company under part XVI. The commission shall adopt rules to assure disclosure, at the time of sale, of coverages financed ~~with personal injury protection~~ and shall

prescribe the form of such disclosure.

Section 52. Subsection (1) of section 627.915, Florida Statutes, is amended to read:

627.915 Insurer experience reporting.—

(1) Each insurer transacting private passenger automobile insurance in this state shall report certain information annually to the office. The information will be due on or before July 1 of each year. The information must ~~shall~~ be divided into the following categories: bodily injury liability; property damage liability; uninsured motorist; ~~personal injury protection benefits;~~ medical payments; and comprehensive and collision. The information given must ~~shall~~ be on direct insurance writings in the state alone and ~~shall~~ represent total limits data. The information set forth in paragraphs (a)-(f) is applicable to voluntary private passenger and Joint Underwriting Association private passenger writings and must ~~shall~~ be reported for each of the latest 3 calendar-accident years, with an evaluation date of March 31 of the current year. The information set forth in paragraphs (g)-(j) is applicable to voluntary private passenger writings and must ~~shall~~ be reported on a calendar-accident year basis ultimately seven times at seven different stages of development.

(a) Premiums earned for the latest 3 calendar-accident years.

(b) Loss development factors and the historic development

of those factors.

(c) Policyholder dividends incurred.

(d) Expenses for other acquisition and general expense.

(e) Expenses for agents' commissions and taxes, licenses, and fees.

(f) Profit and contingency factors as utilized in the insurer's automobile rate filings for the applicable years.

(g) Losses paid.

(h) Losses unpaid.

(i) Loss adjustment expenses paid.

(j) Loss adjustment expenses unpaid.

Section 53. Subsections (2) and (3) of section 628.909, Florida Statutes, are amended to read:

628.909 Applicability of other laws.—

(2) The following provisions of the Florida Insurance Code apply to captive insurance companies <u>that</u> ~~who~~ are not industrial insured captive insurance companies to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, and 624.426.

(b) Chapter 625, part II.

(c) Chapter 626, part IX.

(d) ~~Sections 627.730-627.7405, when no-fault coverage is provided.~~

~~(e)~~ Chapter 628.

(3) The following provisions of the Florida Insurance Code ~~shall~~ apply to industrial insured captive insurance companies to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).

(b) Chapter 625, part II, if the industrial insured captive insurance company is incorporated in this state.

(c) Chapter 626, part IX.

(d) ~~Sections 627.730-627.7405 when no-fault coverage is provided.~~

~~(e)~~ Chapter 628, except for ss. 628.341, 628.351, and 628.6018.

Section 54. Subsections (2), (6), and (7) of section 705.184, Florida Statutes, are amended to read:

705.184 Derelict or abandoned motor vehicles on the premises of public-use airports.—

(2) The airport director or the director's designee shall contact the Department of Highway Safety and Motor Vehicles to notify that department that the airport has possession of the abandoned or derelict motor vehicle and to determine the name and address of the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and any person who has filed a lien on

the motor vehicle. Within 7 business days after receipt of the information, the director or the director's designee shall send notice by certified mail, return receipt requested, to the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle. The notice must ~~shall~~ state the fact of possession of the motor vehicle, that charges for reasonable towing, storage, and parking fees, if any, have accrued and the amount thereof, that a lien as provided in subsection (6) will be claimed, that the lien is subject to enforcement pursuant to law, that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (4), and that any motor vehicle which, at the end of 30 calendar days after receipt of the notice, has not been removed from the airport upon payment in full of all accrued charges for reasonable towing, storage, and parking fees, if any, may be disposed of as provided in s. 705.182(2)(a), (b), (d), or (e), including, but not limited to, the motor vehicle being sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less.

(6) The airport pursuant to this section or, if used, a licensed independent wrecker company pursuant to s. 713.78 shall

have a lien on an abandoned or derelict motor vehicle for all reasonable towing, storage, and accrued parking fees, if any, except that no storage fee may ~~shall~~ be charged if the motor vehicle is stored less than 6 hours. As a prerequisite to perfecting a lien under this section, the airport director or the director's designee must serve a notice in accordance with subsection (2) on the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ or lienholders are not successful, the requirement of notice by mail shall be considered met. Serving of the notice does not dispense with recording the claim of lien.

(7)(a) For the purpose of perfecting its lien under this section, the airport shall record a claim of lien which states ~~shall state~~:

1. The name and address of the airport.

2. The name of the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle.

3. The costs incurred from reasonable towing, storage, and parking fees, if any.

4. A description of the motor vehicle sufficient for identification.

(b) The claim of lien must ~~shall~~ be signed and sworn to or affirmed by the airport director or the director's designee.

(c) The claim of lien is ~~shall be~~ sufficient if it is in substantially the following form:

CLAIM OF LIEN

State of .....

County of .....

Before me, the undersigned notary public, personally appeared ....., who was duly sworn and says that he/she is the ..... of ....., whose address is.....; and that the following described motor vehicle:

...(Description of motor vehicle)...

owned by ....., whose address is ....., has accrued $..... in fees for a reasonable tow, for storage, and for parking, if applicable; that the lienor served its notice to the owner, the insurance company insuring the motor vehicle ~~notwithstanding the provisions of s. 627.736, Florida Statutes~~, and all persons of record claiming a lien against the motor vehicle on ...., ...(year)..., by.....

...(Signature)...

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public).....(Print, Type, or Stamp Commissioned name of Notary Public)...
Personally Known....OR Produced....as identification.

However, the negligent inclusion or omission of any information in this claim of lien which does not prejudice the owner does not constitute a default that operates to defeat an otherwise valid lien.

(d) The claim of lien must ~~shall~~ be served on the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle ~~notwithstanding the provisions of s. 627.736~~, or lienholders are not successful, the requirement of notice by mail shall be considered met. The claim of lien must ~~shall~~ be so served before recordation.

(e) The claim of lien must ~~shall~~ be recorded with the clerk of court in the county where the airport is located. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The lien attaches ~~shall attach~~ at the time of recordation and takes ~~shall take~~ priority as of that time.

Section 55. Subsection (4) of section 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(4)(a) A person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice, by certified mail, to the registered owner, the insurance company insuring the vehicle ~~notwithstanding s. 627.736~~, and all persons claiming a lien thereon, as disclosed by the records in the Department of Highway Safety and Motor Vehicles or as disclosed by the records of any corresponding agency in any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent commercially available system as being titled or registered.

(b) Whenever a law enforcement agency authorizes the removal of a vehicle or vessel or whenever a towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the law enforcement agency of the jurisdiction where the vehicle or vessel is stored shall contact the Department of Highway Safety and Motor Vehicles, or the appropriate agency of the state of registration, if known, within 24 hours through the medium of electronic communications, giving the full description of the

vehicle or vessel. Upon receipt of the full description of the vehicle or vessel, the department shall search its files to determine the owner's name, the insurance company insuring the vehicle or vessel, and whether any person has filed a lien upon the vehicle or vessel as provided in s. 319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall obtain such information from the applicable law enforcement agency within 5 days after the date of storage and shall give notice pursuant to paragraph (a). The department may release the insurance company information to the requestor ~~notwithstanding s. 627.736~~.

(c) The notice of lien must be sent by certified mail to the registered owner, the insurance company insuring the vehicle ~~notwithstanding s. 627.736~~, and all other persons claiming a lien thereon within 7 business days, excluding Saturday and Sunday, after the date of storage of the vehicle or vessel. However, in no event shall the notice of lien be sent less than 30 days before the sale of the vehicle or vessel. The notice must state:

1. If the claim of lien is for a vehicle, the last 8 digits of the vehicle identification number of the vehicle subject to the lien, or, if the claim of lien is for a vessel, the hull identification number of the vessel subject to the

lien, clearly printed in the delivery address box and on the outside of the envelope sent to the registered owner and all other persons claiming an interest therein or lien thereon.

2. The name, physical address, and telephone number of the lienor, and the entity name, as registered with the Division of Corporations, of the business where the towing and storage occurred, which must also appear on the outside of the envelope sent to the registered owner and all other persons claiming an interest in or lien on the vehicle or vessel.

3. The fact of possession of the vehicle or vessel.

4. The name of the person or entity that authorized the lienor to take possession of the vehicle or vessel.

5. That a lien as provided in subsection (2) is claimed.

6. That charges have accrued and include an itemized statement of the amount thereof.

7. That the lien is subject to enforcement under law and that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (5).

8. That any vehicle or vessel that remains unclaimed, or for which the charges for recovery, towing, or storage services remain unpaid, may be sold free of all prior liens 35 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is more than 3 years of age or 50 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is 3 years of age or less.

9. The address at which the vehicle or vessel is physically located.

(d) The notice of lien may not be sent to the registered owner, the insurance company insuring the vehicle or vessel, and all other persons claiming a lien thereon less than 30 days before the sale of the vehicle or vessel.

(e) If attempts to locate the name and address of the owner or lienholder prove unsuccessful, the towing-storage operator shall, after 7 business days, excluding Saturday and Sunday, after the initial tow or storage, notify the public agency of jurisdiction where the vehicle or vessel is stored in writing by certified mail or acknowledged hand delivery that the towing-storage company has been unable to locate the name and address of the owner or lienholder and a physical search of the vehicle or vessel has disclosed no ownership information and a good faith effort has been made, including records checks of the Department of Highway Safety and Motor Vehicles database and the National Motor Vehicle Title Information System or an equivalent commercially available system. For purposes of this paragraph and subsection (9), the term "good faith effort" means that the following checks have been performed by the company to establish the prior state of registration and for title:

1. A check of the department's database for the owner and any lienholder.

2. A check of the electronic National Motor Vehicle Title

Information System or an equivalent commercially available system to determine the state of registration when there is not a current registration record for the vehicle or vessel on file with the department.

3. A check of the vehicle or vessel for any type of tag, tag record, temporary tag, or regular tag.

4. A check of the law enforcement report for a tag number or other information identifying the vehicle or vessel, if the vehicle or vessel was towed at the request of a law enforcement officer.

5. A check of the trip sheet or tow ticket of the tow truck operator to determine whether a tag was on the vehicle or vessel at the beginning of the tow, if a private tow.

6. If there is no address of the owner on the impound report, a check of the law enforcement report to determine whether an out-of-state address is indicated from driver license information.

7. A check of the vehicle or vessel for an inspection sticker or other stickers and decals that may indicate a state of possible registration.

8. A check of the interior of the vehicle or vessel for any papers that may be in the glove box, trunk, or other areas for a state of registration.

9. A check of the vehicle for a vehicle identification number.

10. A check of the vessel for a vessel registration number.

11. A check of the vessel hull for a hull identification number which should be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outmost seaboard side at the end of the hull that bears the rudder or other steering mechanism.

Section 56. Paragraph (a) of subsection (1), paragraph (c) of subsection (7), paragraphs (a), (b), and (c) of subsection (8), and subsections (9) and (10) of section 817.234, Florida Statutes, are amended to read:

817.234 False and fraudulent insurance claims.—

(1)(a) A person commits insurance fraud punishable as provided in subsection (11) if that person, with the intent to injure, defraud, or deceive any insurer:

1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains ~~any~~ false, incomplete, or misleading information concerning any fact or thing material to such claim;

2. Prepares or makes any written or oral statement that is intended to be presented to <u>an</u> ~~any~~ insurer in connection with,

or in support of, any claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains ~~any~~ false, incomplete, or misleading information concerning any fact or thing material to such claim;

3.a. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to an ~~any~~ insurer, purported insurer, servicing corporation, insurance broker, or insurance agent, or any employee or agent thereof, ~~any~~ false, incomplete, or misleading information or a written or oral statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization subscriber or provider contract; or

b. Knowingly conceals information concerning any fact material to such application; or

4. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer a claim for payment or other benefit under medical payments coverage in a motor vehicle ~~a personal injury protection~~ insurance policy if the person knows that the payee knowingly submitted a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of

chapter 400.

(7)

~~(c) An insurer, or any person acting at the direction of or on behalf of an insurer, may not change an opinion in a mental or physical report prepared under s. 627.736(7) or direct the physician preparing the report to change such opinion; however, this provision does not preclude the insurer from calling to the attention of the physician errors of fact in the report based upon information in the claim file. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(8)(a) It is unlawful for any person intending to defraud any other person to solicit or cause to be solicited any business from a person involved in a motor vehicle accident for the purpose of making, adjusting, or settling motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits required by s. 627.736~~. Any person who violates ~~the provisions of~~ this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years.

(b) A person may not solicit or cause to be solicited any business from a person involved in a motor vehicle accident by

any means of communication other than advertising directed to the public for the purpose of making motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits required by s. 627.736,~~ within 60 days after the occurrence of the motor vehicle accident. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A lawyer, health care practitioner as defined in s. 456.001, or owner or medical director of a clinic required to be licensed pursuant to s. 400.9905 may not, at any time after 60 days have elapsed from the occurrence of a motor vehicle accident, solicit or cause to be solicited any business from a person involved in a motor vehicle accident by means of in person or telephone contact at the person's residence, for the purpose of making motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits required by s. 627.736~~. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) A person may not organize, plan, or knowingly participate in an intentional motor vehicle crash or a scheme to create documentation of a motor vehicle crash that did not occur for the purpose of making motor vehicle tort claims or claims

for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits as required by s. 627.736~~. Any person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years.

(10) A licensed health care practitioner who is found guilty of insurance fraud under this section for an act relating to a motor vehicle ~~personal injury protection~~ insurance policy loses his or her license to practice for 5 years and may not receive reimbursement under medical payments coverage in a motor vehicle insurance policy ~~for personal injury protection benefits~~ for 10 years.

Section 57. For the 2020-2021 fiscal year, the sum of $83,651 in nonrecurring funds is appropriated from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation for the purpose of implementing this act.

Section 58. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect January 1, 2021.

COMMERCE COMMITTEE

HB 771 by Rep. Grall
Motor Vehicle Insurance

AMENDMENT SUMMARY
February 27, 2020

Amendment 1 by Rep. Sabatini (Line 1506): The amendment establishes criteria for determining an insurer's liability for third-party bad faith for actions brought under s. 624.155, F.S., or the common law, as follows:

- The insured or claimant has the burden of proof;
- Negligence is not enough to establish the insurer's liability;
- The insured or claimant must prove the insurer:
  - Acted in reckless disregard; and
  - Such action caused damages to any insured;
- The conduct (or lack thereof) of the insured or claimant is made relevant to the determining the insurer's liability;
- An affirmative defense is created that may bar a judgment against the insurer for third-party bad faith:
  - If the insured's or claimant's own conduct, in whole or in part, caused an excess judgment;
- The insurer must be held not liable by the jury or judge, in a bench trial, if the insurer is found to have fulfilled certain specified obligations.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee

Representative Sabatini offered the following:

Amendment (with title amendment)

Between lines 1506 and 1507, insert:

Section 33. Section 624.155, Florida Statutes is amended to read:

624.155 Civil remedy.—

(10) Notwithstanding subsections (1)-(9), in an action for third party bad faith under this chapter or at common law:

(a) An insured or claimant has the burden to prove that the insurer acted in bad faith. Negligent conduct of the insurer is not enough to establish bad faith, an insured or claimant must prove that the insurer acted in reckless disregard for the rights of any insured and that such reckless disregard caused damage to the insured or claimant.

(b) The actions or inactions of the insured or claimant are relevant in an action for bad faith. It is an affirmative defense to a claim for bad faith that the insured's or claimant's own conduct, in whole or in part, caused an excess judgment.

(c) An insurer must advise the insured of settlement opportunities, advise the insured as to the probable outcome of the litigation, warn the insured of the possibility of an excess judgment, advise the insured of steps to avoid an excess judgment, and defend its insured against a legal action when the complaint alleges facts that fairly and potentially bring the suit within policy coverage. If the insurer fulfills these obligations, and if the trier of fact finds that the insurer stood ready and willing to settle for policy limits, then the insurer is not liable.

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

Remove line 1 and insert:

An act relating to insurance; repealing

Remove line 89 and insert:

professions; amending s. 624.155, F.S.; establishing the burden of proof in a common law or statutory claim for third party bad faith; providing that negligent conduct alone is not proof of bad faith by an insurer; creating affirmative defenses to an

action for third party bad faith; establishing duties of an insurer relevant to a third party action; providing that an insurer who fulfills such duties has no liability for third party bad faith; amending s. 626.9541, F.S.; conforming a

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1339 Housing
SPONSOR(S): Ways & Means Committee, Local, Federal & Veterans Affairs Subcommittee, Yarborough
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N, As CS	Renner	Miller
2) Ways & Means Committee	17 Y, 0 N, As CS	Berg	Langston
3) Commerce Committee		Brackett DB	Hamon K.W.H.

SUMMARY ANALYSIS

The bill addresses several housing issues related to development zoning and impact fees, the provision of affordable housing, and the regulation, ownership, and tenancy related to mobile homes and mobile home parks. Specifically, the bill:

- Authorizes local governments to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use.
- Requires local governments to adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use, except in an area of critical state concern.
- Requires the reporting of impact fee data within the annual financial audit report submitted to the Department of Financial Services.
- Requires the evaluation of additional local government contribution criteria within applications submitted for the State Apartment Incentive Loan Program funding.
- Transitions the "pilot" features of a workforce housing program into the Community Workforce Housing Loan Program, administered by the Florida Housing Finance Corporation (Florida Housing).
- Establishes biannual regional workshops for local elected officials serving on affordable housing advisory committees to identify and share best affordable housing practices.
- Adds data reporting within a State Housing Initiatives Partnership Program participant's submissions to Florida Housing about affordable housing applications approved and denied.
- Permits Florida Housing to withhold specified distributions from the Local Government Housing Trust Fund to fund the construction of transitional housing for persons aging out of foster care.
- Clarifies provisions exempting mobile home park owners from the jurisdiction of the Public Service Commission when the park owners provide water and wastewater.
- Requires a mobile home park owner to amend the prospectus when expanding the park to include new lots and an expansion of more than 15 percent requires increasing facilities or amenities within a reasonable timeframe.
- Provides that a mobile home owner may be required to install improvements as disclosed in the prospectus.
- Permits a park owner to issue a 90-day lot rental increase notice to multiple tenants, within a single notice, regardless of the rental agreement anniversary date.
- Permits a mobile home park damaged or destroyed by natural forces to be rebuilt on the same site with the same density as was approved, permitted, or built before being damaged or destroyed.
- Allows a purchaser to assume the seller's prospectus but does not prohibit a park owner from offering the purchaser any approved prospectus.
- Revises mobile home homeowner association notifications, bylaws, and powers.
- Requires certain disputes between a mobile homeowner association and a member be submitted to the Division of Condominiums, Timeshares, and Mobile Homes for binding arbitration conducted pursuant to the statute and the division's adopted procedural rules.

The bill has fiscal impacts on state and local governments. *See* Fiscal Comments Section.

The bill provides for an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Zoning and Impact Fees for Affordable Housing (Sections 1, 3 and 4)

Present Situation

Local Government Authority
The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3]

Comprehensive Plans and Land Use Regulation
Local governments regulate aspects of land development by enacting ordinances that address local zoning, rezoning, subdivision, building construction, landscaping, tree protection,[4] sign regulations or any other regulations controlling the development of land.[5] "Land development regulation" is defined to include a general zoning code, but does not include a zoning map, an action that results in zoning or rezoning of land, or any building construction standard adopted pursuant to and in compliance with the provisions of ch. 553, F.S., on Building Construction Standards.[6]

Section 163.3177, F.S., governs a locality's comprehensive plan which lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments.

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government first amends its comprehensive plan. Among the many components of a comprehensive plan is a land use element designating proposed future general distribution, location, and extent of the uses of land.[7] Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.[8]

State law requires a proposed comprehensive plan amendment to receive public hearings, with the first hearing held by the local planning board.[9] The local government must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified

---

[1] Art. VIII, s.1(f), Fla. Const.
[2] Art. VIII, s.1(g), Fla. Const.
[3] Art. VIII, s.2(b), Fla. Const. *See also* s.166.021(1), F.S.
[4] S. 163.045, F.S., prohibits a local government from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the tree presents a danger to persons or property, as documented by a certified arborist or licensed landscape architect.
[5] *See* ss. 163.3164 and 163.3213, F.S. Pursuant to s. 163.3213, F.S., substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the local comprehensive plan.
[6] S.163.3213(1)(b), F.S.
[7] S. 163.3177(6)(a), F.S.
[8] *Id.* Section 163.3164(4), F.S., specifies the designation of an "agricultural enclave." Among other features, to be considered an agricultural enclave, a parcel must be owned by a single person, used for bona fide agricultural purposes, and must be surrounded by 75 percent by property that has existing or industrial, commercial, or residential development or property designated by the local government for such purposes.
[9] Ss. 163.3174(4)(a) and 163.3184, F.S.

reviewing agencies, including the Department of Economic Opportunity (DEO), the relevant Regional Planning Council, and adjacent local governments that request to participate in the review process.[10]

In 2011, the Legislature bifurcated the process for approving comprehensive plan amendments.[11] Most plan amendments are placed into the Expedited State Review Process, while plan amendments relating to large-scale developments are placed into the State Coordinated Review Process.[12] The two processes operate in much the same way; however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.[13]

Sections 125.66(4), and 166.041(3), F.S., outline regular and emergency ordinance adoption procedures for counties and municipalities. Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances or resolutions initiated by the local government that change the actual zoning map designation of a parcel or parcels of land, must follow additional enhanced procedures and requirements.

Affordable Housing

Affordable housing is generally defined in relation to the annual area median household income adjusted for family size. Section 420.0004, F.S., defines the term "affordable" for housing purposes to mean that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of the median adjusted gross annual income for qualifying households.[14] Eligible households are determined as follows:

- Extremely-low-income households, i.e., total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state;[15]
- Very-low-income households, i.e., total annual gross household income does not exceed 50 percent of the median annual income within the state or the metropolitan statistical area, whichever is greater;[16]
- Low-income households, i.e., total annual gross household income does not exceed 80 percent of the median annual income within the state or the area, whichever is greater;[17]
- Moderate-income households, i.e., total annual gross household income does not exceed 120 percent of the median annual income within the state or the area, whichever is greater.[18]

Statutory Guidance on County and Municipal Affordable Housing

Sections 125.01055 and 166.04151, F.S., authorize a county or municipality, notwithstanding any other provision of law, to adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.

Inclusionary housing ordinances (sometimes called inclusionary zoning ordinances) are land use regulations that require affordable housing units to be provided in conjunction with the development of market rate units. The intent of these ordinances is to increase the production of affordable housing in

---

[10] S. 163.3184, F.S.
[11] Chapter 2011-139, s. 17, Laws of Fla.
[12] *Id.*
[13] S. 163.3184(3) and (4), F.S.
[14] Current limitations are found in the 2019 Income Limits and Rent Limits document producted by the Florida Housing Finance Corporation, available at https://www.floridahousing.org/owners-and-managers/compliance/income-limits (last visited February 14, 2020)
[15] S. 420.0004(9), F.S. Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.
[16] S. 420.0004(17), F.S.
[17] S. 420.0004(11), F.S.
[18] S. 420.0004(12), F.S.

general and to increase the production in specific geographic areas that might otherwise not include affordable housing.[19]

Chapter 2019-165, Laws of Fla., (2019 Act) amended ss. 125.01055 and 166.04151, F.S., to provide that a local inclusionary housing ordinance requiring a developer to provide a specified number of affordable housing units or requiring a developer to contribute to a housing fund must provide incentives to fully offset all costs to the developer of its affordable housing contribution. The developer offset provision does not apply in areas of critical state concern in Monroe County and the City of Key West.

Local Government Impact Fees[20]

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,[21] regulatory fees, and special assessments[22] to pay the cost of providing a facility or service or regulating an activity. As one type of regulatory fee, impact fees are charges imposed by local governments against new development to provide for capital facilities' costs made necessary by such growth.[23] Impact fee calculations vary from jurisdiction to jurisdiction and upon the type of fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.

The 2019 Act amended s. 163.31801, F.S., to codify the 'dual rational nexus test' for impact fees, as articulated in case law. This test requires an impact fee to be proportional and have a reasonable connection, or rational nexus, between 1) the proposed new development and the need and the impact of additional capital facilities, and 2) the expenditure of funds and the benefits accruing to the proposed new development.[24] Local governments are prohibited from requiring the payment of impact fees prior to issuing a building permit for the subject property.[25]

Additionally, the 2019 Act established that impact fee funds must be earmarked for capital facilities that benefit new residents and may not be used to pay existing debt unless specific conditions are met.[26] Provisions also authorized a local government to provide an exception or waiver for an impact fee for affordable housing. If a local government provides such an exception or waiver, it is not required to use any revenues to offset the impact.[27] The impact fee provisions do not apply to water and sewer connection fees.[28]

---

[19] *Ross, J.* and *Outka, U.*, The Florida Housing Coalition, *Inclusionary Housing: A Challenge Worth Taking*, p. 7, https://www.flhousing.org/wp-content/uploads/2012/05/Inclusionary-Housing-A-Challenge-Worth-Taking.pdf (last visited Jan. 23, 2020).

[20] Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, p. 11, http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf (last visited Jan. 23, 2020).

[21] *Id.* Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.

[22] *Id* at 17. Special assessments are typically used to construct and maintain capital facilities or to fund certain services.

[23] *See supra* note 19.

[24] S. 163.31801(3)(f) and (g), F.S.

[25] S. 163.31801(3)(e), F.S.

[26] S. 163.31801(3)(h) and (i), F.S.

[27] S. 163.31801(8), F.S.

[28] S. 163.31801(9), F.S.

Local Government Financial and Economic Status Reporting

Local governments are accountable for the manner in which they spend public funds, and the submission of financial reports required by state law is one method of demonstrating accountability. Section 218.39, F.S., requires the completion of an annual financial audit of accounts and records within nine months after the end of the fiscal year for counties, district school boards, charter schools, and charter technical career centers and certain municipalities and special districts. The statute requires filing of these annual financial audit reports with the State of Florida's Auditor General.

Section 218.32, F.S., requires counties, municipalities, and special districts to complete and submit to the Florida Department of Financial Services (DFS) a copy of its annual financial report (AFR) for the previous fiscal year no later than nine months after the end of the fiscal year. The AFR is not an audit but rather a unique financial document completed using a format prescribed by DFS.[29]

The Bureau of Local Government within DFS has created a web-based AFR system called Local Government Electronic Reporting (LOGER) where local government entities complete and electronically submit AFRs.[30] DFS personnel verify an entity's data entered in LOGER by comparing the data to the financial statements included in the submitted audit report, or with other prescribed information from those entities not subject to the audit requirement and contact the entities for clarification when the comparisons yield significant differences.[31]

In addition to the above local government financial reporting, ch. 2019-56, Laws of Fla, amended ss. 129.03 and 166.241, F.S., to require counties and municipalities, respectively, to report certain economic status information to the Office of Economic and Demographic Research. This includes information on government spending and debt per resident, median income, average local government employee salary, percentage of budget spent on employee salaries and benefits, and the number of taxing districts.

Effect of the Bill

The bill amends ss. 125.01055 and 166.04151, F.S., to authorize a county commission and the governing body of a municipality, respectively, to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use, notwithstanding any other law or local ordinance or regulation to the contrary.

The bill amends s. 163.31801, F.S., to require the reporting of impact fee data within the annual financial report specified under s. 218.32, F.S. The local government must report the specific purpose of an impact fee including the specific infrastructure needs that the fee will be used for; a description of the impact fee schedule policy and fee calculation methods; the amount assessed for each purpose and type of dwelling; and the total amount of impact fees charged by type of dwelling.

---

[29] See Department of Financial Services Bureau of Financial Reporting, *Uniform Accounting System Manual for Florida Local Governments* (2014), https://www.myfloridacfo.com/Division/AA/Manuals/2014UASManual-7-31-15_FINAL.pdf (last visited Jan. 23, 2020).

[30] LOGER, https://apps.fldfs.com/LocalGov/Reports/ (last visited Jan. 23, 2020).

[31] *See* Florida Auditor General, *Local Government Financial Reporting System: Performance Audit Report 2019-028* (Sep. 2019), https://flauditor.gov/pages/pdf_files/2019-028.pdf (last visited Jan. 23, 2020).

Accessory Dwelling Units (Section 2)

Present Situation

An accessory dwelling unit (ADU) is an ancillary or secondary living unit that has a separate kitchen, bathroom, and sleeping area existing either within the same structure, or on the same lot, as the primary dwelling unit.[32] The Legislature finds that encouraging local governments to permit ADUs to increase the availability of affordable rentals serves a public purpose.[33] A local government may adopt an ordinance allowing ADUs in any area zoned for single-family residential use based upon a finding that there is a shortage of affordable rentals in its jurisdiction.[34] Each ADU allowed by an ordinance must count towards the affordable housing component of the housing element in the local government's comprehensive plan.[35] An application for a building permit to construct such ADUs must include an affidavit which attests that the unit will be rented at an affordable rate to an extremely-low-income, very-low-income, low-income, or moderate-income person or persons.[36]

In 2019, the Florida Housing Coalition, the entity currently providing technical assistance and training for the Catalyst Program under s. 420.531, F.S., published the *Accessory Dwelling Unit Guidebook.*[37] The stated intent of the Guidebook is to address the challenges and benefits a community might face as it considers allowing the implementation of ADUs and presents a range of alternatives for local governments and other stakeholders to consider and evaluate. Among other data points, the Guidebook found that:

- Of Florida's 67 counties, 16 did not address ADUs in their land development codes; and
- Of the 15 most populous cities in Florida, 11 of them explicitly allow ADUs in single-family districts.

Effect of the Bill

The bill provides a legislative finding that it serves an important public purpose to require (rather than encourage) the permitting of ADUs in single-family residential areas. A local government must (rather than may) adopt an ordinance to allow ADUs in any area zoned for single family residential use, except in an area of critical state concern where the state caps the number of new housing units which may be built within a year. The required ordinance would not be conditioned upon a finding that there is a shortage of affordable rentals within the local jurisdiction.

State Apartment Incentive Loan Program: Local Government Contributions (Section 10)

Present Situation

The State Apartment Incentive Loan (SAIL) Program[38] provides low-interest loans on a competitive basis to affordable housing developers. SAIL is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the State Housing Trust Fund. This money often serves to bridge the gap between the primary financing and the total cost of the development. SAIL dollars are available to individuals, public entities, nonprofit organizations, or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families. In most cases, the SAIL loan cannot exceed 25 percent of the total development cost and can be used in conjunction with other state and federal programs.

---

[32] S.163.31771(2)(a), F.S.
[33] S. 163.31771(1), F.S.
[34] S.163.31771(3), F.S.
[35] S. 163.31771(5), F.S.
[36] S. 163.31771(4), F.S. The parameters defining the various income designations are specified in s 420.0004, F.S.
[37] *See* Florida Housing Coalition, *Accessory Dwelling Unit Guidebook,* (May 2019) https://www.flhousing.org/wp-content/uploads/2019/08/ADU-Guidebook.pdf (last visited Jan. 23, 2020).
[38] *See* s. 420.5087, F.S., and Florida Housing Finance Corporation, *State Apartment Incentive Loan, Background*, for information cited in this section, http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan (last visited Jan. 23, 2020).

Florida Housing Finance Corporation (Florida Housing) administers the SAIL program and is required to establish a review committee for the competitive evaluation and selection of applications submitted. The evaluation criteria include local government contributions and local government comprehensive planning and activities that promote affordable housing.[39]

Effect of the Bill

The bill amends provisions of the SAIL Program to require the evaluation of additional components within the review and selection process of applications submitted for funding. The additional components relate to criteria surrounding local government contributions, including policies that promote access to public transportation, reduce the need for on-site parking, and expedite permits for affordable housing projects. The bill also modifies the requirement relating to a sponsor's prior experience to provide that the sponsor cannot be required to have previously worked with Florida Housing in order to qualify for the program. This modification broadens the eligible pool of sponsors beyond those who already work with Florida Housing.

Community Workforce Housing Innovation Pilot Program (Section 11)

Present Situation

The Community Workforce Housing Innovation Pilot Program[40] (CWHIP) was created to provide affordable rental and home ownership community workforce housing for essential services personnel with medium incomes in high-cost and high-growth counties. Designed to use regulatory incentives and state and local funds to promote local public-private partnerships and to leverage government and private sources, Florida Housing administered the program in 2006[41] and 2007.[42]

CWHIP targeted households earning higher incomes than traditionally served through other affordable housing programs to create homeowner or rental housing for persons such as teachers, firefighters, healthcare providers and others as defined by local governments. Households earning up to 140 percent of AMI could be served through the program with that provision rising up to 150 percent of AMI in the Florida Keys.[43]

CWHIP provided priority funding consideration to projects in counties where the disparity between the AMI and the median sales price for a single family home was greatest. Priority funding consideration was specified where:[44]

- The local jurisdiction established local incentives such as expedited reviews of development orders and permits and supported development near transportation hubs;
- Financial strategies like tax increment financing were utilized; and
- Projects set aside at least 80 percent of units for workforce housing and at least 50% for essential services personnel.

CWHIP loans were awarded with a 1 to 3 percent interest rate and could be forgiven where long-term affordability was provided and where at least 80 percent of the units are set aside for workforce housing and at least 50 percent of the units are set aside for essential services.[45]

Florida Housing administered two rounds of funding for CWHIP: $50 million in October of 2006 and $62.4 million in December of 2007.[46]

---

[39] S.420.5087(6)(c), F.S.
[40] Ch. 2006-69, Laws of Fla.
[41] *Id.* at s. 33
[42] Specific Appropriations 1694, ch. 2007-72, Laws of Fla. Fiscal Year 2006 and 2007 appropriations were nonrecurring and no additional funds have been appropriated since.
[43] S. 420.5095(3)(a), F.S.
[44] S. 420.5095(8), F.S.
[45] S. 420.5095(11), F.S.
[46] *See* Florida Housing Finance Corporation, *2007 Annual Report*, p. 21, and *2008 Annual Report*, p. 11, http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2007AnnualReport.pdf and

Effect of the Bill

The bill transitions the "pilot" features of a workforce housing program into the Community Workforce Housing Loan Program, administered by Florida Housing. Workforce housing is defined as housing affordable to persons of families whose total annual income does not exceed 80 percent of the area median income or 120 percent of the area median income, adjusted for household size in specified areas of critical concern. Florida Housing must establish a loan application process pursuant to SAIL Program provisions under s. 420.5087, F.S., and award loans at a 1 percent interest rate for a term not to exceed 15 years. Projects must be given priority if they set aside at least 50 percent of units for workforce housing.

Affordable Housing Workshops for Locally Elected Officials utilizing Catalyst and SHIP (Sections 12 and 15)

Present Situation

Affordable Housing Catalyst Program
Section 420.531, F.S., directs Florida Housing to operate the Affordable Housing Catalyst Program (Catalyst Program) to provide specialized technical support to local governments and community-based organizations to implement the HOME Investment Partnership Program, State Housing Initiatives Partnership Program (SHIP), and other affordable housing programs.[47] Florida Housing currently contracts with the Florida Housing Coalition to provide Catalyst Program training and technical assistance.[48]

The Florida Housing Coalition's technical assistance team consists of a geographically dispersed network of personnel providing on-site and telephone/e-mail technical assistance as well as training through workshops and webinars.[49] This technical assistance supports local governments and nonprofit organizations and includes:

- Leveraging program dollars with other public and private funding sources;
- Working effectively with lending institutions;
- Implementing regulatory reform;
- Training for boards of directors;
- Implementing rehabilitation and emergency repair programs;
- Assisting with the creation of fiscal and program tracking systems; and
- Meeting compliance requirements of state and federally funded housing programs.

http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2008AnnualReport_CDfile.pdf (last visited Jan. 23, 2020).

[47] To the maximum extent feasible, the entity to provide the necessary expertise must be recognized by the Internal Revenue Service as a nonprofit tax-exempt organization.

[48] Contract for Affordable Housing Catalyst Services between Florida Housing Finance Corporation and the Florida Housing Coalition, Inc., (July 1, 2019) https://www.floridahousing.org/docs/default-source/legal/contracts/2019/014-2019---the-florida-housing-coalition-inc---affordable-housing-catalyst-program-services.pdf?sfvrsn=c09dea7b_2 (last visited Jan 23, 2020).

[49] The 2019/2020 Catalyst Training Schedule, https://www.floridahousing.org/docs/default-source/programs/special-programs/catalyst/training-schedule-catalyst-2019-2020.pdf?sfvrsn=2 (last visited Jan. 23, 2020). A link to the Florida Housing Coalition's *Work Shop and Webinar Calendar* is available at *https://www.flhousing.org/events/list/?tribe_paged=2&tribe_event_display=list* (last visited Jan. 23, 2020).

State Housing Initiatives Partnership Program

Administered by Florida Housing, the SHIP Program provides funds to all 67 counties and 52 Community Development Block Grant entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.[50] The program targets very-low, low, and moderate-income families. SHIP is funded through a statutory distribution of documentary stamp tax revenues that are deposited into the Local Government Housing Trust Fund.

Subject to specific appropriation, funds are distributed quarterly to local governments participating in the program.[51] Funds are expended according to each local government's adopted Local Housing Assistance Plan (LHAP), which details the housing strategies for that particular government.[52] Local governments submit their LHAPs to Florida Housing for review to ensure that they meet the broad statutory guidelines and the requirements of the program rules. Florida Housing must approve an LHAP before a local government may receive SHIP funding for the applicable years.

SHIP Incentive Strategies and Advisory Committee

Within 12 months of adopting a LHAP, each participating local government must amend the plan to include local housing incentive strategies.[53] The strategies must:

- Assure that permits for affordable housing projects are expedited;
- Establish an ongoing process to review local policies, ordinances, regulations, and plan provisions that actually increase the cost of housing; and
- Include a schedule for implementing the incentive strategies.[54]

Local governments must appoint members to an Affordable Housing Advisory Committee (AHAC) that triennially reviews the established policies and procedures, ordinances, land development regulations, and adopted local government comprehensive plan.[55] The AHAC is comprised of local citizens representing a range of affordable housing stakeholders.[56] At a minimum, each AHAC must submit a report to the local governing body on certain affordable housing incentives including:[57]

- The processing of approvals of development orders or permits for affordable housing.
- The modification of impact-fee requirements, including reduction or waiver of fees and alternative methods of fee payment for affordable housing.
- The allowance of flexibility in densities for affordable housing.
- The allowance of affordable accessory residential units in residential zoning districts.
- The reduction of parking and setback requirements for affordable housing.

Local governments that receive the minimum allocation under SHIP[58] must perform the initial incentives review but may elect to not perform the subsequent triennial reviews.

Statutorily Authorized Affordable Housing Study Groups

In 1986, the Affordable Housing Study Commission (Commission) was created to evaluate affordable housing policy issues and programs.[59] This commission is charged with recommending public policy changes to the Governor and Legislature to stimulate community development and revitalization, as well as promoting the production, preservation and maintenance of decent, affordable housing for all Floridians. The Commission is comprised of 21 members meeting specific statutory criteria, all of whom

[50] *See* ss. 420.907-420.9089, F.S.
[51] S. 420.9073, F.S.
[52] S.420.9075, F.S.
[53] S. 420.9076(1), F.S.
[54] S. 420.9071(16), F.S.
[55] S. 420.9076(4), F.S.
[56] S.420.9076(2), F.S.
[57] S. 420.9076(4), F.S.
[58] Pursuant to s. 420.9073(3), F.S., the minimum local housing distribution is $350,000.
[59] Chapter 86-192 Laws of Fla.

are appointed by the Governor.[60] Florida Housing provides administrative support to the Commission, but the Commission has not received funding or gubernatorial appointments since 2008.[61]

In 2017, the Legislature created a statewide Affordable Housing Workgroup (Workgroup).[62] The 14-member body consisted of current and previously elected state and local officials as well as stakeholders from the private and non-profit affordable housing community. The Workgroup's final report was submitted to the Governor and Legislature and provided findings and recommendations addressing the state's affordable housing needs, including strategies and pathways for low-income housing in the state.[63]

Effect of the Bill

The bill amends s. 420.531, F.S., to establish biannual regional workshops for locally elected officials serving on affordable housing advisory committees as provided for SHIP in s. 420.9076, F.S. The entity providing statewide training and technical assistance for the Catalyst Program will administer and conduct the workshops with the intent of facilitating peer-to-peer identification and sharing of best affordable housing practices. Workshops must be conducted through teleconferencing or other technological means. The entity providing the statewide training and technical assistance must provide annual reports summarizing the deliberations, actions, and recommendations of each region, as well as attendance records of locally elected officials, to the President of the Senate, the Speaker of the House of Representatives, and Florida Housing by March 31 of the following year.

This section also includes SAIL among the programs listed for which Catalyst Program may provide technical support.

The bill amends s. 420.9076, F.S., to modify requirements of SHIP affordable housing advisory committees. The new provisions include ensuring that one locally elected official from each participating SHIP county or municipality serves on the advisory committee. This official, or a locally elected designee, must attend biannual workshops on affordable housing best practices. If a locally elected official fails to attend three consecutive regional workshops, Florida Housing may withhold the participating SHIP entity's funds pending the official's attendance at the next regularly scheduled biannual meeting.

The section also requires annual, rather than triennial, affordable housing advisory committee reviews of local policies and provisions affecting affordable housing. An annual report of advisory committee reviews and recommendations must be submitted to the local governing body and to the entity providing statewide training and technical assistance for the Catalyst Program. In addition to currently provided information, the report must now also include information on all allowable fee waivers for the development or construction of affordable housing.

Local Housing Distributions for Persons Aging out of Foster Care (Section 13)

Present Situation

Affordable Housing Funding for Special Needs Populations
Section 420.0004(13), F.S., defines a person with special needs as:

> an adult person requiring independent living services in order to maintain housing or develop independent living skills and who has a disabling condition; a young adult formerly in foster care who is eligible for services under s. 409.1451(5); a survivor of

[60] S. 420.609, F.S.
[61] Commission Annual Reports submitted from 1987-2008, http://apps.floridahousing.org/StandAlone/AHSC/AHSC-AnnualReports.htm (last visited Jan. 23, 2020).
[62] Chapter 2017-71, s. 46, Laws of Fla. Legislation creating the workgroup designated Florida Housing Finance Corporation as the administering entity.
[63] The Workgroup's Final Report, meeting agendas, research materials and other information is available at https://www.floridahousing.org/about-florida-housing/workgroup-on-affordable-housing (last visited Jan. 24, 2020).

domestic violence as defined in s. 741.28; or a person receiving benefits under the Social Security Disability Insurance (SSDI) program or the Supplemental Security Income (SSI) program or from veterans' disability benefits.

Each local government participating in the SHIP Program must use a minimum of 20 percent of its local housing distribution to serve persons with special needs.[64] A local government must certify it will meet this requirement through existing approved strategies in its LHAP.

Section 420.507(48), F.S., requires Florida Housing to reserve up to 5 percent of certain annual allocations for high-priority affordable housing projects for veterans and their families, and other special needs populations. Florida Housing must reserve an additional 5 percent of each allocation for affordable housing projects directed to persons with disabling conditions.

According to the statewide 2019 Rental Market Study, an estimated 104,273 cost burdened renter households receive disability-related Social Security, SSI,[65] and veterans' benefits statewide.[66] Based on service use, an estimated 7,836 survivors of domestic violence and 2,574 youth exiting foster care are in need of affordable housing.[67]

Services and Support for Persons Aging Out of Foster Care
The Department of Children and Families (DCF) is responsible for administering an array of independent living services to eligible young adults ranging in ages 18-22 (not yet 23), including supports in making the transition to self-sufficiency.[68]

Extended Foster Care (EFC) provides eligible young adults the option of remaining in foster care until the age of 21 or until the age of 22 if they have a disability. EFC is a voluntary program that requires the young adult to agree to participate in school, work, or a work training program in accordance with federal and state guidelines. Exceptions and accommodations are made for young adults with a documented disability. [69]

Effect of the Bill

The bill authorizes Florida Housing to withhold up to five percent of annual Local Government Housing Trust Fund distributions to eligible SHIP entities for the construction of transitional housing for persons aging out of foster care. Funds may not be used for the design or planning of transitional housing and the housing must be constructed on campus. Florida Housing must consult with the DCF on criteria for such housing. Any withheld funds not distributed or committed by the end of the year fiscal year must be distributed utilizing existing calculation formulas.

---

[64] S. 420.9075(5)(d), F.S.
[65] Supplemental Security Income. *See generally* 42 U.S.C. §§1381-1385 (Title XVI of the Social Security Act).
[66] Shimberg Center for Housing Studies, University of Florida, 2019 Rental Market Study, p. 2 (May 2019), http://www.shimberg.ufl.edu/publications/RMS_2019.pdf (last visited Jan. 23, 2020). The Rental Market Study defines 'cost burdened' to mean the household is paying at least 40 percent of income toward gross rent. *See* p. 5.
[67] *Id.*
[68] Ss. 39.6251 & 409.1451, F.S.
[69] Department of Children and Families, *Independent Living Services Annual Report* (Jan. 31, 2019), https://www.myflfamilies.com/service-programs/child-welfare/docs/2019LMRs/Independent%20Living%20Services%202018%20Annual%20Report.pdf (last visited Jan. 23, 2020).

Annual SHIP Entity Reporting Submissions to Florida Housing (Section 14)

Present Situation

Each local government participating in SHIP must annually submit a report of its affordable housing programs and accomplishments to Florida Housing. The local government's chief elected official or his or her designee must certify the report as accurate and complete. Among the many items included in the report are:[70]

- The number of households served by income category, age, family size, and race, and data regarding any special needs populations.
- The number of units and the average cost of producing units under each local housing assistance strategy.
- By income category, the number of mortgages made, the average mortgage amount, and the rate of default.
- A description of the status of implementation of each local housing incentive strategy.

After reviewing the report, if Florida Housing determines a violation of the criteria for a LHAP may have occurred, or that an eligible sponsor or eligible person has violated the applicable award conditions, Florida Housing reports the violation to its compliance monitoring agent and the Executive Office of the Governor.[71] If a violation is deemed to have occurred, the distribution of program funds to the local government must be suspended until the violation is corrected.[72]

Effect of the Bill

The bill amends s. 420.9075, F.S., to require a SHIP entity's annual program reporting to Florida Housing include data on the number of affordable housing applications submitted, the number approved, and the number denied. The bill also requires the selection criteria developed by each SHIP entity to provide priority to applicants who need less assistance under the program. This change is meant to maximize the total number of applicants who receive an award under the program.

Mobile Homes

Chapter 723, F.S., the "Florida Mobile Home Act" (Mobile Home Act) addresses the unique relationship between a mobile home owner and a mobile home park owner.[73] The provisions in the Mobile Home Act apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[74]

The courts recognize the relationship between the mobile home park owner and the mobile home owner is not simply one of landlord and tenant but "a hybrid type of property relationship" in which both have "basic property rights which must reciprocally accommodate and harmonize."[75] This is due to the very nature of the mobile home:

> Mobile homes come to rest in established parks, the wheels are generally removed, they are anchored to the ground, because of forces of the wind, connections with electricity, water and sewerage are made, awnings are frequently attached, and to a large degree they lose their mobility except, unless, and until the wheels are restored, disruption of electrical, water and sewer connections is had and a certain amount of dismantling and crating is had, all at a substantial expense of the owner of the mobile home who had bought such home with the expectation of being able to remain in the park for a not unreasonable time so long as he abides by all the reasonable regulations established by the park owner. The removal from one park to

---

[70] S. 420.9075(10), F.S.
[71] S. 420.9075(13), F.S.
[72] *Id.*
[73] S.723.004, F.S.
[74] S. 723.002(1), F.S. The Mobile Home Act does not apply to tenancies in which both the mobile home and the mobile home lot are rented or leased by the mobile home resident.
[75] *Stewart v. Green*, 300 So. 2d 889, 892 (Fla. 1974).

another becomes more than a mere hitching to a truck or tractor and pulling it away. To a large degree, mobile homes are occupied by people in the lower income brackets who cannot spend several hundred dollars at the mere whim of a lessor park.[76]

Mobile homes are not "mobile" in the same sense as are recreational vehicles or camper trailers.[77] "Because of the difficulties inherent in moving the home from one settled location to another...it is hard to imagine a situation where the park owner and the tenants are in an equal bargaining position on rent increases."[78] To better balance the interests of the park owner and the home owner, the Legislature enacted laws culminating in the Mobile Home Act[79]

Chapter 723.003, F.S., provides the following relevant definitions:

- "Mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.[80]
- "Mobile home owner," "mobile homeowner," "home owner," or "homeowner" means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.[81]

Mobile home parks are regulated by the Division of Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation. A mobile home park owner must pay to the division, on or before October 1 of each year, an annual fee of $4 for each mobile home lot within the mobile home park owned.[82] If the fee is not paid by December 31 a penalty of 10 percent of the amount due must be assessed. Additionally, if the fee is not paid, the park owner does not have standing to maintain or defend any action in in court until the amount due, plus any penalty, is paid.[83] Additionally, a surcharge of $1 is levied on each annual fee. The surcharge collected must be deposited in the Florida Mobile Home Relocation Trust Fund.[84]

Mobile Home Dealer Display Requirements (Section 5)

Present Situation

A mobile home dealer must hold a license issued by the DHSMV.[85] The term "dealer" means "any person engaged in the business of buying, selling, or dealing in mobile homes or offering or displaying mobile homes for sale."[86] The term also includes a mobile home broker.[87] Any person who buys, sells, deals in, or offers or displays for sale, or who acts as the agent for the sale of, one or more mobile homes in any 12-month period is prima facie presumed to be a dealer. The term "dealer" does not include banks, credit unions, or finance companies that acquire mobile homes as an incident to their regular business and does not include mobile home rental and leasing companies that sell mobile homes to dealers licensed under this section.[88]

---

[76] *Palm Beach Mobile Homes v. Strong*, 300 So. 2d 881, 886 (Fla. 1974).
[77] *Stewart v. Green*, *id.*
[78] *Belcher v. Kier,* 558 So.2d 1039, 1042 (Fla. 2d DCA 1990) (citation omitted).
[79] *Herrick v. Florida Dept. of Business Regulation*, 595 So.2d 148, 152 (Fla. 1st DCA 1992).
[80] S. 723.003(12), F.S.
[81] S. 723.003(11), F.S.
[82] S. 723.007(1), F.S.
[83] *Id.*
[84] S. 723.007(2), F.S.
[85] S. 320.77(2), F.S.
[86] S. 320.77(1)(a), F.S.
[87] *See* s. 320.77(1)(b), F.S., defining the term "mobile home broker."
[88] S. 320.77(1)(a), F.S.

The place of business of the mobile home dealer must be at a permanent location, not a tent or a temporary stand or other temporary quarters. The location of the place of business must afford sufficient unoccupied space to store all mobile homes offered and displayed for sale.[89]

Effect of the Bill

The bill amends s. 320.77, F.S., to remove the requirement that a place of business of a mobile home dealer must afford sufficient unoccupied space to store all mobile homes offered and displayed for sale. Under the bill, the place of business of a mobile home dealer must have sufficient space to display a manufactured home as a model home.

Recreational Vehicle Dealers (Section 6)

Present Situation

A recreational vehicle dealer must hold a license issued by the DHSMV.[90] The term "dealer" means any person engaged in the business of buying, selling, or dealing in recreational vehicles or offering or displaying recreational vehicles for sale. The term does not include banks, credit unions, and finance companies that acquire recreational vehicles as an incident to their regular business and does not include mobile home rental and leasing companies that sell recreational vehicles to dealers licensed under s. 320.77, F.S.

A recreational vehicle is a type of motor vehicle primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.[91] The basic "entities" of a recreational vehicle include the "park trailer," which is a transportable unit that has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances.[92]

A recreational vehicle dealer must be insured under a garage liability insurance policy that includes a minimum $25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and $10,000 personal injury protection.[93]

Effect of the Bill

The bill amends s. 320.771(3)(j), F.S., to exempt a recreational vehicle dealer from the requirement to be insured under a garage liability insurance policy if the dealer sells only park trailers.

Repair and Remodeling Codes for Mobile and Manufactured Homes (Sections 7 and 8)

Present Situation

Chapter 320, F.S., relates to the regulation and enforcement of motor vehicle standards and licenses by the DHSMV. Section 320.01(2)(a), F.S., defines the term "mobile home" to mean:

> [A] structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. For tax purposes, the length of a mobile home is the distance from the exterior of the wall nearest to the drawbar and coupling mechanism to the exterior of the wall at the opposite end of the home where such walls enclose living or other interior space. Such distance includes expandable rooms, but

[89] S. 320.77(3)(h), F.S.
[90] S. 320.771(2), F.S.
[91] *See* s. 320.01(1) (b), F.S.
[92] S. 320.01(1) (b) 7., F.S.
[93] S.320.771 (3) (j), F.S.

> excludes bay windows, porches, drawbars, couplings, hitches, wall and roof extensions, or other attachments that do not enclose interior space. In the event that the mobile home owner has no proof of the length of the drawbar, coupling, or hitch, then the tax collector may in his or her discretion either inspect the home to determine the actual length or may assume 4 feet to be the length of the drawbar, coupling, or hitch.

Section 320.01(2)(b), F.S., defines the term "manufactured home" to mean:

> [A] mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.

Section 320.822(2), F.S., defines the term "code" to include the "Mobile Home Repair and Remodeling Code" and the "Used Recreational Vehicle Code."

Section 320.8232(2), F.S., requires that the provisions of the Repair and Remodeling Code ensure safe and livable housing and that the code not be more stringent than those standards required to be met in the manufacture of mobile homes. Such provisions must include, but not be limited to, standards for structural adequacy, plumbing, heating, electrical systems, and fire and life safety. Section 320.8232(2), F.S., uses the term "Repair and Remodeling Code" and not the term "Mobile Home Repair and Remodeling Code."

Section 320.822(1), F.S., requires compliance with the "Used Recreational Vehicle Code" for recreational vehicles manufactured after January 1, 1968, and sold or offered for sale in this state by a dealer or manufacturer.

Effect of the Bill

The bill amends s. 320.822, F.S., to revise the term "Mobile Home Repair and Remodeling Code" to the "Mobile and Manufactured Home Repair and Remodeling Code."

The bill amends s. 320.8232, F.S., to require the Mobile and Manufactured Home Repair and Remodeling Code to be a uniform code. The bill requires that all repairs and remodeling of mobile and manufactured homes must be performed in accordance with rules of the DHSMV.

Jurisdiction of the Public Service Commission as it relates to Mobile Home Parks and Water and Wastewater Systems (Section 9)

Present Situation

Currently, the Public Service Commission (PSC) has jurisdiction over 150 water and wastewater investor-owned utilities (IOUs) in 38 of 67 counties in Florida.[94]

The remaining water and wastewater customers in the state are not subject to PSC regulation and are served either by IOUs in non-jurisdictional counties, by wells and septic tanks, or by systems owned, operated, managed, or controlled by governmental authorities or by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits).[95]

Section 367.022(5), F.S., exempts from regulation by the PSC "landlords providing [water or wastewater] service to their tenants without specific compensation for the service." Also exempted from regulation is any person who resells water service to his or her tenants or to individually metered

---

[94] Public Service Commission, *Data of the Florida Utility Industry*, p. 31 (June 2019), http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/June%202019.pdf (last visited Jan. 23, 2020).

[95] *See* s. 367.022, F.S.

residents for a fee that does not exceed the actual purchase price of the water service plus the actual cost of meter reading and billing, not to exceed nine percent of the actual cost of service.[96]

Chapter 723.003, F.S., provides the following relevant definitions:

- "Mobile home subdivision" means a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.[97]
- "Mobile home lot rental agreement" or "rental agreement" means any mutual understanding or lease, whether oral or written, between a mobile home owner and a mobile home park owner in which the mobile home owner is entitled to place his or her mobile home on a mobile home lot for either direct or indirect remuneration of the mobile home park owner.[98]
- "Lot rental amount" means all financial obligations, except user fees, which are required as a condition of the tenancy.[99]
- "User fees" means those amounts charged in addition to the lot rental amount for nonessential optional services provided by or through the park owner to the mobile home owner under a separate written agreement between the mobile home owner and the person furnishing the optional service or services.[100]

Effect of the Bill

The bill includes the reselling of "wastewater service" within the current exemption from regulation by the PSC.

The bill also exempts from regulation by the PSC the owner of a mobile home park operating both as a mobile home park and a mobile home subdivision, who provides service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation.

Prospectus or Offering Circular and Rental Agreements (Sections 16 and 17)

Present Situation

Prospectus

The mobile home park prospectus is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner.[101] The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to homeowners and prospective homeowners in a mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.[102]

The prospectus must include a description of the mobile home park property, including, but not limited to:[103]

- The number of lots in each section, the approximate size of each lot, the setback requirements, and the minimum separation distance between mobile homes as required by law.
- The maximum number of lots that will use shared facilities of the park; and, if the maximum number of lots will vary, a description of the basis for variation.

[96] S. 367.022(9), F.S.
[97] S. 723.003(14), F.S.
[98] S. 723.003(10), F.S.
[99] S. 723.003(6), F.S.
[100] S. 723.003(21), F.S.
[101] S. 723.012, F.S.
[102] S. 723.011(3), F.S.
[103] S. 723.012(4), F.S.

The prospectus must also include a description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of occupancy in the park.[104]

If the tenancy was in existence on the effective date of ch. 723, F.S., (June 4, 1984),[105] the prospectus or offering circular offered by the mobile home park owner must contain the same terms and conditions as rental agreements offered to all other mobile home owners residing in the park on the effective date of the Mobile Home Act, excepting only rent variations based upon lot location and size, and must not require any mobile home owner to install any permanent improvements.

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval.[106] The division maintains copies of each prospectus and all amendments to each prospectus that it has approved.[107]

The park owner must provide a copy of the prospectus with exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first. The lot rental agreement is voidable by the lessee for a period of 15 days after receipt of the prospectus.[108]

By rule of the division, the prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in certain specified circumstances.[109]

Mobile Home Lot Rental Agreements

Rental agreements in a mobile home park must be consistent with the Mobile Home Act.[110] The provisions of ch. 723, F.S., are deemed to apply to every tenancy in a mobile home park whether or not a tenancy is covered by a valid written rental agreement.[111]

Park owners are prohibited from offering a rental agreement for a term of less than one year.[112] If there is no written rental agreement, the rental term may not be less than one year from the date of initial occupancy. The initial term may be less than one year in order to permit the park owner to have all rental agreements within the park commence at the same time. Thereafter, all terms must be for a minimum of one year.[113]

Effect of the Bill

The bill amends s. 723.011, F.S., to permit the park owner to disclose in the prospectus permanent improvements the mobile home owner must install to the mobile home.

The bill amends s. 723.012, F.S., to provide that if a park owner intends to include additional property and mobile home lots and to increase the number of lots that will use the shared facilities of the park, the park owner must amend the prospectus to disclose those additions. If the number of mobile home lots in the park increase by more than 15 percent of the total number of lots in the original prospectus, the park owner will reasonably offset the impact of the additional lots by increasing the shared facilities. The amendment to the prospectus must include a reasonable timeframe for providing the required additional shared facilities. The costs and expenses necessary to increase the shared facilities will not be passed on or pass through to the existing mobile home owners.

Mobile Home Owner General Obligations (Section 18)

---

[104] S. 723.012(7). F.S.
[105] *See* Chapter 84-80, Laws of Fla.
[106] S. 723.011(1)(a), F.S.
[107] S. 723.011(1)(d), F.S.
[108] Ss. 723.011(2) and 723.014(1), F.S.
[109] *See* Rule 61B-31.001, F.A.C.
[110] S. 723.031(1), F.S.
[111] *Id.* at (2).
[112] S.723.031(4), F.S.
[113] *Id.*

Present Situation

Section 723.023, F.S., sets forth the mobile home owner's general obligations. A mobile home owner must at all times:

- Comply with building, housing, and health codes, including compliance with all building permits and construction requirements for construction on the mobile home and lot. The homeowner is responsible for all fines imposed by the local government for noncompliance with any local codes.
- Keep the mobile home lot, which he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes.
- Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

Effect of the Bill

The bill requires mobile home owners to:

- Receive written approval from the mobile home park owner before making any exterior modification or addition to the home.
- When vacating the premises, remove any debris and other property of any kind that is left on the mobile home lot.

Mobile Home Park Rent Increases (Sections 19 and 20)

Present Situation

A purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and seller.[114] The purchaser is also entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.[115]

The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement "in an amount deemed appropriate by the mobile home park owner."[116] The park owner must give affected mobile home owners and the board of directors of the homeowners' association, if one has been formed, at least a 90-day notice of a lot rental increase.[117]

The amount of the lot rental increase must be disclosed to the purchaser of a mobile home and agreed to in writing by the purchaser.[118] Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park, and the lot rental may not increase during the term of the rental agreement.[119] However, the mobile home park owner may pass on, at any time during the term of the rental agreement, ad valorem property taxes and utility charges, or increases of either, if the passing on of these costs was disclosed prior to the tenancy.[120]

A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a factor for increasing the lot rental amount in the prospectus or rental agreement.[121]

---

[114] S. 723.059(3), F.S.
[115] *Id.*
[116] S. 723.059(4), F.S.
[117] S. 723.037(1), F.S.
[118] S. 723.031(5), F.S.
[119] *Id.*
[120] S. 723.031(5)(c), F.S.
[121] *Id.*

A park owner must give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations.[122] The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request.[123]

A committee of no more than five people, designated by a majority of the owners or by the board of directors of the homeowners' association (if formed), and the park owner must meet no later than 60 days before the effective date of a rent increase to discuss the reasons for the increase.[124] At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.[125]

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition the division to initiate mediation.[126] If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase as unreasonable.[127]

Effect of the Bill

The bill amends s. 723.031, F.S., to require ad valorem property taxes or non-ad valorem assessments be disclosed in the prospectus or rental agreement as a separate charge or a factor in order for a park owner to be deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments.

The bill prohibits a park owner from charging or collecting from the mobile home owners any sum of ad valorem taxes or non-ad valorem taxes in an amount in excess of the sums remitted by the park owner to the tax collector.

The bill amends s. 723.037, F.S., to permit the park owner to give notice of all rent increases for multiple anniversary dates in the same 90-day notice. The bill provides that the requirement for the park owner to make available, upon request, the identifying information for homeowners affected by a rent increase does not authorize the park owner to release of the names, addresses, or other private information about the homeowners to the association or any other person for any other purpose.

The bill provides that the committee must address all lot rental amount increases that are specified in the notice of lot rental amount increase, regardless of the effective date of the increase.

Replacing Mobile Homes in Mobile Home Parks (Section 21)

Present Situation

Except as expressly preempted by the requirements of DHSMV, a mobile home owner or the park owner is authorized to "site any size new or used mobile home and appurtenances on a mobile home lot in accordance with the lot sizes, separation and setback distances, and other requirements in effect at the time of the approval of the mobile home park."[128]

Effect of the Bill

---

[122] S. 723.037(1), F.S.
[123] *Id.*
[124] S. 723.037(4)(a), F.S.
[125] S. 723.037(4)(b), F.S.
[126] S. 723.037(5)(a), F.S.
[127] S. 723.0381, F.S.
[128] S. 723.041(4), F.S.

The bill provides that a mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, and built before the park was damaged or destroyed.

The bill provides that the regulation of the uniform fire safety standards established under s. 633.206, F.S., are not limited by this section of the Mobile Home Act. However, the section supersedes any other density, separation, setback, or lot size regulation adopted after initial permitting and construction of the mobile home park.

Park Owner Disclosures Prior to Residence (Section 22)

Present Situation

A mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed pursuant to s. 723.011, F.S, which requires the park owner to deliver a prospectus to the prospective homeowner before the rental of a mobile home lot.[129]

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division.[130] The prospectus must include a "description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park."[131]

Effect of the Bill

The bill provides that a mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed in the prospectus as required under s. 723.012(7), F.S.

[129] S. 723.011(2), F.S.
[130] S. 723.011(1), F.S.
[131] S. 723.012(7), F.S.

Purchasers of a Mobile Home within Mobile Home Park (Section 23)

Present Situation

The purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and the seller. The purchaser is entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.[132]

Upon the expiration of the assumed rental agreement, the mobile home park owner may increase the rental amount if the increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the initial offering circular or prospectus and ch. 723, F.S.[133]

Effect of the Bill

The bill provides that while that the purchaser of a mobile home on a rented lot may assume the seller's prospectus, nothing prohibits the park owner from offering the purchaser any approved prospectus.

The bill requires a mobile home park owner to disclose the lot rental amount to be charged for a new tenancy prior to the applicant paying a screening fee and applying for approval of the tenancy.

Termination of a Tenancy (Section 24)

Present Situation

Section 723.061, F.S., provides the following grounds for termination of a rental agreement:

- Nonpayment of rent;
- Conviction of a violation of a federal or state law or local ordinance, if the violation is detrimental to the health, safety, or welfare of other residents of the mobile home park;
- A violation of the park rules or of the rental agreement;
- A change in land use; or
- Failure to qualify as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

Notice of an eviction must be posted on the premises and sent to the mobile home owner and tenant or occupant by certified or registered mail, return receipt requested.[134]

Effect of the Bill

The bill requires a park owner to send the change in use eviction notice to the division within 20 days. The division must then provide the executive director of the Florida Mobile Home Relocation Corporation with a copy of the notice.

The bill provides that a park owner's acceptance of any portion of a lot rental amount may constitute a waiver of the right to terminate the rental agreement or the right to bring a civil action for the noncompliance for any subsequent or continuing noncompliance. Any rent so received by the park owner must be accounted for at the final hearing.

---

[132] S. 723.059(3), F.S.
[133] S. 723.059(4), F.S.
[134] S. 723.061(4), F.S.

Homeowners' Association Incorporation (Section 25)

Present Situation

In order to exercise the rights of a homeowners' association (association), mobile home owners must form an association that must be either a for profit or not for profit corporation and of which not less than two-thirds of all the mobile home owners within the park must have consented in writing to become members or shareholders. The term "member" or "shareholder" means a mobile home owner who consents to be bound by the articles of incorporation, bylaws, and polices of the incorporated homeowners' association.[135]

Upon receiving its certificate of incorporation the association must notify the park owner in writing of its creation and must advise the park owner of the names and addresses of the association officers. This notice must be made by personal delivery upon the park owner's representative as designated in the prospectus or by certified mail, return receipt requested.[136]

Effect of the Bill

The bill amends s. 723.076, F.S., to specify that the association must notify the park owner in writing by certified mail, return receipt requested, of names and addresses of newly elected or appointed officers or members to the association.

Homeowners' Association Bylaws (Section 26)

Present Situation

Voting Requirements and Proxies

Unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum for a meeting of the association.[137] A member may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. However, members may cast votes for association board members by limited or general proxy.[138] If a mobile home or subdivision lot is jointly owned, the owners of the mobile home or subdivision lot must be counted as one for the purpose of determining the number of votes required for a majority. Only one vote per mobile home or subdivision lot will be counted. Any number greater than 50 percent of the total number of votes constitutes a majority.[139]

Board of directors' and committee meetings

Meetings of the board of directors and meetings of its committees at which a quorum is present must be open to all members. This requirement does not apply to meetings held for the purpose of discussing personnel matters or meetings with the association's attorney where the contents of the discussion would be governed by the attorney-client privilege.[140]

Member Meetings

The association must conduct at least one member meeting annually during which members of the board of the directors are elected. The association's bylaws may not restrict the nomination from the floor of any member desiring to be a candidate for board membership. All nominations from the floor must be made at a meeting of the members held at least 30 days before the annual meeting. Unless waived in writing, the notice of the annual meeting must be mailed, hand delivered, or electronically transmitted to each member to at least 14 days before the meeting. An officer of the association must

---

[135] S. 723.075(1), F.S.
[136] S. 723.076(1), F.S.
[137] S. 723.078(2)(b)1., F.S.
[138] S. 723.078(2)(b)2., F.S.
[139] S. 723.078(2)(b)2, F.S.
[140] S. 723.078(2)(c), F.S.

provide an affidavit affirming that the notices were mailed or hand delivered to each member at the address last furnished to the corporation.[141]

Minutes of Meetings
The minutes of all meetings of members of the association, the board of directors, and a committee must be maintained in writing and approved by the members, board, or committee, as applicable. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes. The minutes of all meetings of members and of the board of directors must be maintained, available for inspection, and retained for at least seven years.[142]

Effect of the Bill

Voting Requirements and Proxies
The bill provides that a proxy may not be used in the election of board members in general elections or elections to fill vacancies caused by recall, resignation, or otherwise. Board members must be elected by written ballot or by voting in person.

Under the bill, elections must be decided by a plurality of the ballots cast. There is no quorum requirement for an election but at least 20 percent of the eligible voters must cast a ballot for an election to be valid. A member is prohibited from allowing any other person to cast his or her ballot; improperly cast ballots are invalid. An election is required only if there are more candidates nominated than vacancies that exist on the board.

The bill provides that each member or other eligible person wishing to be a candidate for the board of directors must appear on the ballot in alphabetical order by surname. Ballots may not indicate if a candidate is an incumbent on the board. Ballots must be uniform in appearance and may not provide a space for the signature of, or any other means of identifying a vote. If the ballot contains more votes than vacancies or fewer votes than vacancies, the ballot is invalid unless otherwise stated in the bylaws. Write-in candidates and more than one vote per candidate per ballot are not allowed.

The bill requires election oversight by an impartial committee responsible for complying with all ballot requirements. The bill defines "impartial committee" to mean a committee whose members do not include any of the following people or their spouses:
- Current board members.
- Current association officers.
- Candidates for the association or board.

The bill requires the association bylaws provide a method for determining the winner of an election in which there is more than one candidate for the same position receiving the same number of votes.

The bill directs the division to adopt procedural rules to govern elections, including, but not limited to, rules for providing notice by electronic transmission and rules for maintaining secrecy of ballots.

Board of directors' and committee meetings
The bill provides that meetings between the park owner and the board of directors or any of the board's committees are not subject to the requirement that meetings be open to the association members.

The bill clarifies that notices of all board or committee meetings open to association members must be posted in a conspicuous place upon the park property at least 48 hours in advance, except in an emergency.

[141] S. 723.078(2)(d), F.S.
[142] S. 723.078(2)(e), F.S.

Member Meetings
The bill changes the date for the meeting at which to nominate candidates to the board of directors to 27, rather than 30, days before the annual meeting. Unless otherwise stated in the bylaws, notices may be delivered electronically.

Minutes of Meetings
Under the bill, the minutes of board or committee meetings that are closed to members are privileged, confidential, and not available for inspection or photocopying.

The bill provides that meetings open for members of the board of directors must be maintained in writing. All minutes of open meetings must be retained within this state for a period of at least five years, rather than seven years in current law.

Powers and Duties of Homeowners' Associations (Section 27)

Present Situation

The powers of the association include, but are not limited to, the maintenance, management, and operation of the park property.[143]The association must maintain the following items, when applicable, which constitute the official records of the association:[144]

- A copy of the articles of incorporation and each amendment.
- A copy of the bylaws and each amendment.
- A copy of the written rules or policies and each amendment.
- Approved minutes for all meetings of the members, board of directors, and committees of the board. Records must be retained within this state for at least 7 years.
- A current roster of all members and their mailing address and lot identifications.
- All insurance policies or copies, which must be retained for at least 7 years.
- A copy of all contracts or agreements to which the association is a party. Copies must be retained for at least 7 years.
- The financial and accounting records, which must be maintained for at least 7 years.
- All other written records that are related to the operation of the association.

The official records must be maintained within the state for at least 7 years and must be made available to a member for inspection or photocopying within 10 business days after receipt by the board or its designee of a written request submitted by certified mail, return receipt requested.[145]

Failure to provide access to the records creates a rebuttable presumption that the association willfully failed to comply with this section. A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $10 per day up to 10 days and calculation begins on the 11th business day after receipt of the written request by certified mail, return receipt requested.

Effect of the Bill

The bill includes the approved minutes of meetings open for members, open for members of the board, and committees as part of the official association records and changes the length of retention from seven to five years. The bill specifies that insurance policies and contracts or agreements must be retained for at least five years after the expiration date of the policy or contract. The bill provides that financial and accounting records of the association must be maintained within this state for at least five years, and also specifies that all other written records must be retained within this state for at least five years or at least five years after the expiration date.

---

[143] S. 723.079(1), F.S.
[144] S. 723.079(4)(a)-(i), F.S.
[145] S. 723.079(5), F.S.

The bill requires that the association records be available for inspection by a member within 20 business days. Under the bill, an association member denied access to association records may recover only $10 per calendar day, not to exceed $100, and the calculation for the damages begins on the 21st business day after the association receives the written request for records.

The bill provides that a dispute between a member and an association regarding inspecting or photocopying official records must be submitted to mandatory binding arbitration with the division, and the arbitration must be conducted pursuant to s. 723.1255, F.S., and procedural rules adopted by the division.

Alternative Resolution of Recall, Election, and Inspection and Photocopying of Official Records Disputes (Section 28)

Present Situation

As required by statute, the division adopted rules of procedure governing binding arbitration for recall proceedings.[146]

Effect of the Bill

The bill expands s. 723.1255, F.S., to include disputes between a mobile home owner and a homeowners' association regarding the election and recall of officers or directors or the inspection and photocopying of official records. The dispute must be submitted to the division for mandatory binding arbitration conducted under the statute and the procedural rules adopted by the division.

Each party is responsible for paying its own attorney fees, expert and investigator fees, and associated costs. The cost of the arbitrator must be divided equally between the parties regardless of the outcome.

The bill clarifies that the division must adopt rules of procedure to govern mandatory binding arbitration proceedings.

B. SECTION DIRECTORY:

Section 1 Amends s. 125.01055, F.S., relating to county affordable housing.

Section 2 Amends s. 163.31771, F.S., relating to accessory dwelling units.

Section 3 Amends s. 163.31801, F.S., relating to impact fees.

Section 4 Amends s. 166.04151, F.S., relating to municipal affordable housing.

Section 5 Amends s. 320.77, F.S., relating to licenses required for mobile home park dealers.

Section 6 Amends s. 320.771, F.S., relating to licenses required for recreational vehicle dealers.

Section 7 Amends s. 320.822, F.S., relating to definitions pertaining to manufactured homes and recreational vehicles.

Section 8 Amends s. 320.8232, F.S., relating to uniform standards for used recreational vehicles and repair and remodeling code for mobile homes.

Section 9 Amends s. 367.022, F.S., relating to water and wastewater system exemptions.

Section 10 Amends s. 420.5087, F.S., relating to the State Apartment Incentive Loan Program.

Section 11 Amends s. 420.5095, F.S., relating to Community Workforce Housing Loan Program.

[146] Ch. 61B-50, F.A.C.

Section 12 Amends s. 420.531, F.S., relating to Affordable Housing Catalyst Program.

Section 13 Amends s. 420.9073, F.S., relating to local housing distributions.

Section 14 Amends s. 420.9075, F.S., relating to local housing assistance plans.

Section 15 Amends s. 420.9076, F.S., relating to adoption of affordable housing incentive strategies.

Section 16 Amends s. 723.011, F.S., relating to disclosures prior to renting mobile home lots.

Section 17 Amends s. 723.012, F.S., relating to prospectus or offering circular for mobile home park property.

Section 18 Amends s. 723.023, F.S., relating to mobile home owner's general obligations.

Section 19 Amends s. 723.031, F.S., relating to mobile home lot rental agreements.

Section 20 Amends s. 723.037, F.S., relating to lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.

Section 21 Amends s. 723.041, F.S., relating to entrance fees, refunds, exit fee prohibition, replacement homes for mobile home parks.

Section 22 Amends s. 723.042, F.S., relating to mobile homeowner provision of improvements.

Section 23 Amends s. 723.059, F.S., relating to rights of mobile home purchaser.

Section 24 Amends s. 723.061, F.S., relating to grounds and proceedings for mobile homeowner evictions.

Section 25 Amends s. 723.076, F.S., relating to incorporation of mobile home park associations.

Section 26 Amends s. 723.078, F.S., relating to mobile home park homeowner association bylaws.

Section 27 Amends s. 723.079, F.S., relating to mobile home park homeowner association powers and duties.

Section 28 Amends s. 723.1255, F.S., relating to alternative resolution of recall disputes.

Section 29 Reenacts s. 420.507, F.S., relating to powers of the Florida Housing Finance Corporation, to incorporate the amendment made to s. 420.5087, F.S. in a reference thereto.

Section 30 Reenacts s. 193.018, F.S., relating to land owned by a community land trust used to provide affordable housing, to incorporate the amendment made to s. 420.5095, F.S., in a reference thereto.

Section 31 Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Affordable Housing

The Affordable Housing Catalyst Program will incur new costs related to the administration of regional affordable housing workshops for locally elected officials as specified in sections 13 and 16 of the bill. According to Florida Housing, based on current activities, webinars cost $2,000 each to conduct and in person meetings cost $5,250 each. Based on the assumption that the state is divided into six regions, with two meetings each per year, the cost of the regional workshops would be between $24,000 and $63,000 depending on whether the method of delivery is in person or by teleconference.[147]

The bill requires local governments to adopt an ordinance to allow ADUs in any area zoned for single family residential use, except in an area of critical state concern where the state caps the number of new housing units which may be built within a year. This may result in an insignificant negative fiscal impact on local governments for having to modify current ordinances.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 8 of the bill requires repair and remodeling of mobile and manufactured homes be performed in accordance with agency rules. Neither the statute being amended, s. 320.8232, F.S., nor the rulemaking authority of DHSMV under s. 320.011, F.S., provide specific criteria for the rules to be adopted by DHSMV. The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising

[147] Florida Housing, 2020 Analysis for HB 1339. On file with Local, Federal & Veterans Affairs Subcommittee.

unbridled discretion in creating policy or applying the law.[148] A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, could be invalidated if it allows the agency to make the law.[149] Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.[150]

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 653, the bill requires that transitional housing "must be constructed on campus." The term "campus" is undefined in the bill and in the statute being amended. As it is unclear to what the term "campus" refers, FHFC may not have clear direction for the allocation and use of funds under the terms in the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2020, the Local, Federal & Veterans Affairs Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment made the following changes:

- Exempts local governments in an area of critical state concern from having to adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use;
- Decreases the applicable sales tax to three percent on the sales price on the sale of new mobile homes;
- Provides that the owner of a mobile home park operating both as a mobile home park and subdivision and who provides service within the park and subdivision to a combination of tenants and lot owners, is exempt from regulation by the Public Service Commission;
- Provides that mobile home owners may be required to install permanent improvements to the mobile home as disclosed in the prospectus.
- Allows a home buyer to have the option to receive the seller's prospectus or opt for a new prospectus;
- Requires a mobile home park owner to amend the prospectus when expanding the park to include new lots and an expansion of more than 15 percent requires increasing facilities or amenities within a reasonable timeframe;
- Reverts to current law requiring a mobile home park owner to provide an eviction notice by certified mail;
- Prohibits a mobile home park owner from charging or collecting from mobile home owners any amount charged for ad valorem taxes or non-ad valorem taxes in excess of the sums remitted by the park owner to the tax collector;
- Requires a park owner to send the change in use eviction notice to the division and the division must send the notice to the Florida Mobile Home Relocation Corporation;
- Provides that the homeowners' association must notify the park owner in writing by certified mail, return receipt requested, of the names and addresses of newly elected or appointed officers or members to the association;
- Reduces the number of years the homeowners' association must retain certain records from seven to five years;
- Revises homeowners' association bylaws; and
- Revises arbitration proceedings to provide that each party must be responsible for paying its own attorney fees, expert and investigator fees, and associated costs; and specifies costs of the arbitrators must be divided equally between the parties regardless of the outcome.

---

[148] *Sloban v. Florida Bd. of Pharmacy,* 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Askew v. Cross Keys Waterways*, 372 So. 2d 913, 918-919 (Fla. 1978); Board *of Trustees of the Internal Improvement Trust Fund v. Day Cruise Ass'n,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

[149] *Conner v. Joe Hatton, Inc.,* 216 So. 2d 209 (Fla.1968).

[150] *Sarasota County. v. Barg*, 302 So. 2d 737 (Fla. 1974).

On February 19, 2020, the Ways and Means Committee adopted four amendments and reported the bill favorably as a committee substitute. The amendments made the following changes:

- Removed provisions related to sales tax on mobile homes.
- Removed the waiting period for electing an individual to the board of a mobile home park homeowners' association if he or she was previously convicted of a felony. The bill previously disallowed eligibility until more than five years had passed from the date the person's civil rights were restored.
- Revised criteria used to evaluate applicants for the State Apartment Incentive Loan Program to specify that sponsors cannot be required to have previously worked with the Florida Housing Finance Corporation to participate in the program.
- Requires jurisdictions participating in the State Housing Initiatives Partnership Program to prioritize applicants who need less assistance in an effort to maximize the total number of applicants who may receive an award.

This analysis is drafted to the committee substitute as approved by the Ways and Means Committee.

A bill to be entitled

An act relating to housing; amending s. 125.01055, F.S.; authorizing a board of county commissioners to approve development of affordable housing on any parcel zoned for residential, commercial, or industrial use; amending s. 163.31771, F.S.; revising legislative findings; requiring local governments to adopt ordinances that allow accessory dwelling units in any area zoned for single-family residential use; providing an exception; amending s. 163.31801, F.S.; requiring counties, municipalities, and special districts to include certain data relating to impact fees in their annual financial reports; amending s. 166.04151, F.S.; authorizing governing bodies of municipalities to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use; amending s. 320.77, F.S.; revising a certification requirement for mobile home dealer applicants relating to the applicant's business location; amending s. 320.771, F.S.; exempting certain recreational vehicle dealer applicants from a garage liability insurance requirement; amending s. 320.822, F.S.; revising the definition of the term "code"; amending s. 320.8232, F.S.; revising applicable standards for the repair and

remodeling of mobile and manufactured homes; amending s. 367.022, F.S.; exempting certain mobile home park owners and mobile home subdivision owners from regulation by the Florida Public Service Commission relating to water and wastewater service; amending s. 420.5087, F.S.; revising the criteria used by a review committee when evaluating and selecting specified applications for state apartment incentive loans; amending s. 420.5095, F.S.; renaming the Community Workforce Housing Innovation Pilot Program as the Community Workforce Housing Loan Program; requiring the program to provide workforce housing; revising the definition of the term "workforce housing"; deleting the definition of the term "public-private partnership"; authorizing the Florida Housing Finance Corporation to provide loans under the program to applicants for construction of workforce housing; requiring the corporation to establish a certain loan application process; deleting provisions requiring the corporation to provide incentives for local governments to use certain funds; requiring projects to receive priority consideration for funding under certain circumstances; deleting a provision providing for the expedition of local government comprehensive plan amendments to implement a program project;

requiring that the corporation award loans at a specified interest rate and for a limited term; conforming provisions to changes made by the act; amending s. 420.531, F.S.; specifying that technical support provided to local governments and community-based organizations includes implementation of the State Apartment Incentive Loan Program; requiring the entity providing training and technical assistance to convene and administer biannual regional workshops; requiring such entity to annually compile and submit certain information to the Legislature and the corporation by a specified date; amending s. 420.9073, F.S.; authorizing the corporation to withhold a certain portion of funds distributed from the Local Government Housing Trust Fund to be used for certain transitional housing; prohibiting such funds from being used for specified purposes; requiring the corporation to consult with the Department of Children and Families to create minimum criteria for such housing; providing for the distribution of withheld funds; amending s. 420.9075, F.S.; requiring an optimization plan to be included in local housing assistance plan criteria; revising requirements for reports submitted by counties and certain municipalities to the corporation; amending s.

420.9076, F.S.; revising the membership of local affordable housing advisory committees beginning on a specified date; requiring the committees to perform specified duties annually instead of triennially; requiring locally elected officials serving on advisory committees, or their designees, to attend biannual regional workshops; providing a penalty; amending s. 723.011, F.S.; providing construction relating to rental agreements and tenancies; providing that a mobile home owner may be required to install permanent improvements as disclosed in the mobile home park prospectus; amending s. 723.012, F.S.; authorizing mobile home park owners to make certain prospectus amendments; providing requirements for the amendment; prohibiting certain costs and expenses from being passed on to existing mobile home owners; amending s. 723.023, F.S.; revising general obligations for mobile home owners; amending s. 723.031, F.S.; specifying a requirement for disclosing and agreeing to a mobile home lot rental increase; revising construction relating to a park owner's disclosure of certain taxes and assessments; amending s. 723.037, F.S.; authorizing mobile home park owners to give notice of lot rental increases for multiple anniversary dates in one notice; providing

construction; revising a requirement for a lot rental negotiation committee; amending s. 723.041, F.S.; providing that a mobile home park damaged or destroyed due to natural forces may be rebuilt with the same density as previously approved, permitted, and built; providing construction; amending s. 723.042, F.S.; conforming a provision to changes made by the act; amending s. 723.059, F.S.; authorizing certain mobile home purchasers to assume the remainder of a seller's prospectus; authorizing a mobile home park owner to offer a purchaser any approved prospectus; amending s. 723.061, F.S.; specifying entities that must be provided with a copy of an eviction notice when received by a mobile home owner; specifying the waiver and nonwaiver of certain rights of a mobile home park owner under certain circumstances; requiring the accounting at final hearing of rents received; amending s. 723.076, F.S.; revising procedures related to the election or appointment of new officers in a homeowner's association; amending s. 723.078, F.S.; revising requirements for board elections and ballots; requiring an impartial committee to be responsible for overseeing the election process and complying with ballot requirements; defining the term "impartial committee"; requiring that association bylaws provide

a method for determining the winner of an election under certain circumstances; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt procedural rules; revising the types of meetings that are not required to be open to members; providing an exception to a provision requiring an officer of an association to provide an affidavit affirming certain information; authorizing meeting notices to be provided by electronic means; providing that the minutes of certain board and committee meetings are privileged and confidential; conforming provisions to changes made by the act; amending s. 723.079, F.S.; revising homeowners' association recordkeeping requirements; revising the timeframes for which certain records are required to be retained and be made available for inspection or photocopying; capping the amount of damages for which an association is liable when a member is denied access to official records; requiring that certain disputes be submitted to mandatory binding arbitration with the division; amending s. 723.1255, F.S.; requiring that certain disputes be submitted to mandatory binding arbitration with the division; providing requirements for such arbitration and fees and costs; requiring the division to adopt rules; reenacting s. 420.507(22)(i), F.S.,

relating to powers of the Florida Housing Finance Corporation, to incorporate the amendment made to s. 420.5087, F.S., in a reference thereto; reenacting s. 193.018(2), F.S., relating to land owned by a community land trust used to provide affordable housing, to incorporate the amendment made to s. 420.5095, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (4) is added to section 125.01055, Florida Statutes, to read:

125.01055 Affordable housing.—

(4) Notwithstanding any other law, local ordinance, or regulation to the contrary, the board of county commissioners may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use.

Section 2. Subsections (1), (3), and (4) of section 163.31771, Florida Statutes, are amended to read:

163.31771 Accessory dwelling units.—

(1) The Legislature finds that the median price of homes in this state has increased steadily over the last decade and at a greater rate of increase than the median income in many urban

areas. The Legislature finds that the cost of rental housing has also increased steadily and the cost often exceeds an amount that is affordable to extremely-low-income, very-low-income, low-income, or moderate-income persons and has resulted in a critical shortage of affordable rentals in many urban areas in the state. This shortage of affordable rentals constitutes a threat to the health, safety, and welfare of the residents of the state. Therefore, the Legislature finds that it serves an important public purpose to require ~~encourage~~ the permitting of accessory dwelling units in single-family residential areas in order to increase the availability of affordable rentals for extremely-low-income, very-low-income, low-income, or moderate-income persons.

(3) Each ~~Upon a finding by a local government that there is a shortage of affordable rentals within its jurisdiction, the~~ local government shall ~~may~~ adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use, except in an area of critical state concern where the state caps the number of new housing units which may be built within a year.

(4) ~~If the local government adopts an ordinance under this section,~~ An application for a building permit to construct an accessory dwelling unit must include an affidavit from the applicant which attests that the unit will be rented at an affordable rate to an extremely-low-income, very-low-income,

low-income, or moderate-income person or persons.

Section 3. Subsection (10) is added to section 163.31801, Florida Statutes, to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(10) In addition to the items that must be reported in the annual financial reports under s. 218.32, each county, municipality, and special district must report all of the following data on each impact fee charged:

(a) The specific purpose of the impact fee, including the specific infrastructure needs to be met such as transportation, parks, water, sewer, and schools.

(b) The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered fees based on the number of bedrooms, or tiered fees based on the square footage.

(c) The amount assessed for each purpose and for each type of dwelling.

(d) The total amount of impact fees charged by type of dwelling.

Section 4. Subsection (4) is added to section 166.04151, Florida Statutes, to read:

166.04151 Affordable housing.—

(4) Notwithstanding any other law, local ordinance, or regulation to the contrary, the governing body of a municipality

may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use.

Section 5. Paragraph (h) of subsection (3) of section 320.77, Florida Statutes, is amended to read:

320.77 License required of mobile home dealers.—

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:

(h) Certification by the applicant:

1. That the location is a permanent one, not a tent or a temporary stand or other temporary quarters.~~; and,~~

2. Except in the case of a mobile home broker, that the location affords sufficient ~~unoccupied~~ space to display ~~store all mobile~~ homes ~~offered and displayed~~ for sale. A space to display a manufactured home as a model home satisfies this requirement.~~; and that~~ The location must be ~~is~~ a suitable place in which the applicant can in good faith carry on business and keep and maintain books, records, and files necessary to conduct such business, which must ~~will~~ be available at all reasonable hours to inspection by the department or any of its inspectors or other employees.

This paragraph does ~~subsection shall~~ not preclude a licensed

mobile home dealer from displaying and offering for sale mobile homes in a mobile home park.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

Section 6. Paragraph (j) of subsection (3) of section 320.771, Florida Statutes, is amended to read:

320.771 License required of recreational vehicle dealers.—

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:

(j) A statement that the applicant is insured under a garage liability insurance policy, which shall include, at a minimum, $25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and $10,000 personal injury protection, if the applicant is to be licensed as a dealer in, or intends to sell, recreational vehicles. However, a garage liability policy is not required for the licensure of a mobile home dealer who sells only park trailers.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

Section 7. Paragraph (c) of subsection (2) of section 320.822, Florida Statutes, is amended to read:

320.822 Definitions; ss. 320.822-320.862.—In construing ss. 320.822-320.862, unless the context otherwise requires, the following words or phrases have the following meanings:

(2) "Code" means the appropriate standards found in:

(c) The Mobile and Manufactured Home Repair and Remodeling Code and the Used Recreational Vehicle Code.

Section 8. Subsection (2) of section 320.8232, Florida Statutes, is amended to read:

320.8232 Establishment of uniform standards for used recreational vehicles and repair and remodeling code for mobile homes.—

(2) The Mobile and Manufactured Home ~~provisions of the~~ Repair and Remodeling Code must be a uniform code, must ~~shall~~ ensure safe and livable housing, and may ~~shall~~ not be more stringent than those standards required to be met in the manufacture of mobile homes. Such code must ~~provisions shall~~ include~~, but not be limited to,~~ standards for structural adequacy, plumbing, heating, electrical systems, and fire and

life safety. All repairs and remodeling of mobile and manufactured homes must be performed in accordance with department rules.

Section 9. Subsection (9) of section 367.022, Florida Statutes, is amended, and subsection (14) is added to that section, to read:

367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

(9) Any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water and wastewater service plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.

(14) The owner of a mobile home park operating both as a mobile home park and a mobile home subdivision, as those terms are defined in s. 723.003, who provides service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation.

Section 10. Paragraph (c) of subsection (6) of section 420.5087, Florida Statutes, is amended to read:

420.5087 State Apartment Incentive Loan Program.—There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated

mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for lifesafety, building preservation, health, sanitation, or security-related repairs or improvements, the following provisions shall apply:

(c) The corporation shall provide by rule for the establishment of a review committee for the competitive evaluation and selection of applications submitted in this program. The review committee must use evaluation criteria that include, ~~including,~~ but are not limited to, the following ~~criteria~~:

1. Tenant income and demographic targeting objectives of the corporation.

2. Targeting objectives of the corporation which will ensure an equitable distribution of loans between rural and urban areas.

3. Sponsor's agreement to reserve the units for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, for a time period that exceeds the minimum required by federal law or this part.

4. Sponsor's agreement to reserve more than:

a. Twenty percent of the units in the project for persons

or families who have incomes that do not exceed 50 percent of the state or local median income, whichever is higher; or

b. Forty percent of the units in the project for persons or families who have incomes that do not exceed 60 percent of the state or local median income, whichever is higher, without requiring a greater amount of the loans as provided in this section.

5. Provision for tenant counseling.

6. Sponsor's agreement to accept rental assistance certificates or vouchers as payment for rent.

7. Projects requiring the least amount of a state apartment incentive loan compared to overall project cost, except that the share of the loan attributable to units serving extremely-low-income persons must be excluded from this requirement.

8. Local government contributions and local government comprehensive planning and activities that promote affordable housing and policies that promote access to public transportation, reduce the need for onsite parking, and expedite permits for affordable housing projects.

9. Project feasibility.

10. Economic viability of the project.

11. Commitment of first mortgage financing.

12. Sponsor's prior experience. This criterion may not require a sponsor to have prior experience with the corporation

to qualify for financing under the program.

13. Sponsor's ability to proceed with construction.

14. Projects that directly implement or assist welfare-to-work transitioning.

15. Projects that reserve units for extremely-low-income persons.

16. Projects that include green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.

17. Job-creation rate of the developer and general contractor, as provided in s. 420.507(47).

Section 11. Section 420.5095, Florida Statutes, is amended to read:

420.5095 Community Workforce Housing Loan ~~Innovation Pilot~~ Program.—

(1) The Legislature finds and declares that recent rapid increases in the median purchase price of a home and the cost of rental housing have far outstripped the increases in median income in the state, ~~preventing essential services personnel from living in the communities where they serve and thereby~~ creating the need for innovative solutions for the provision of housing opportunities ~~for essential services personnel~~.

(2) The Community Workforce Housing Loan ~~Innovation Pilot~~ Program is created to provide ~~affordable rental and home~~

~~ownership community~~ workforce housing for persons ~~essential services personnel~~ affected by the high cost of housing~~, using regulatory incentives and state and local funds to promote local public-private partnerships and leverage government and private resources~~.

(3) For purposes of this section, the term~~:~~

~~(a)~~ "workforce housing" means housing affordable to natural persons or families whose total annual household income does not exceed 80 ~~140~~ percent of the area median income, adjusted for household size, or 120 ~~150~~ percent of area median income, adjusted for household size, in areas of critical state concern designated under s. 380.05, for which the Legislature has declared its intent to provide affordable housing, and areas that were designated as areas of critical state concern for at least 20 consecutive years before ~~prior to~~ removal of the designation.

~~(b) "Public-private partnership" means any form of business entity that includes substantial involvement of at least one county, one municipality, or one public sector entity, such as a school district or other unit of local government in which the project is to be located, and at least one private sector for-profit or not-for-profit business or charitable entity, and may be any form of business entity, including a joint venture or contractual agreement.~~

(4) The Florida Housing Finance Corporation may ~~is~~

~~authorized to~~ provide loans under the ~~Community Workforce Housing Innovation Pilot~~ program ~~loans~~ to applicants ~~an applicant~~ for construction ~~or rehabilitation~~ of workforce housing ~~in eligible areas. This funding is intended to be used with other public and private sector resources~~.

(5) The corporation shall establish a loan application process under s. 420.5087 ~~by rule which includes selection criteria, an application review process, and a funding process~~. ~~The corporation shall also establish an application review committee that may include up to three private citizens representing the areas of housing or real estate development, banking, community planning, or other areas related to the development or financing of workforce and affordable housing.~~

~~(a) The selection criteria and application review process must include a procedure for curing errors in the loan applications which do not make a substantial change to the proposed project.~~

~~(b) To achieve the goals of the pilot program, the application review committee may approve or reject loan applications or responses to questions raised during the review of an application due to the insufficiency of information provided.~~

~~(c) The application review committee shall make recommendations concerning program participation and funding to the corporation's board of directors.~~

~~(d) The board of directors shall approve or reject loan applications, determine the tentative loan amount available to each applicant, and rank all approved applications.~~

~~(e) The board of directors shall decide which approved applicants will become program participants and determine the maximum loan amount for each program participant.~~

~~(6) The corporation shall provide incentives for local governments in eligible areas to use local affordable housing funds, such as those from the State Housing Initiatives Partnership Program, to assist in meeting the affordable housing needs of persons eligible under this program. Local governments are authorized to use State Housing Initiative Partnership Program funds for persons or families whose total annual household income does not exceed:~~

~~(a) One hundred and forty percent of the area median income, adjusted for household size; or~~

~~(b) One hundred and fifty percent of the area median income, adjusted for household size, in areas that were designated as areas of critical state concern for at least 20 consecutive years prior to the removal of the designation and in areas of critical state concern, designated under s. 380.05, for which the Legislature has declared its intent to provide affordable housing.~~

~~(7) Funding shall be targeted to innovative projects in areas where the disparity between the area median income and the~~

~~median sales price for a single-family home is greatest, and where population growth as a percentage rate of increase is greatest. The corporation may also fund projects in areas where innovative regulatory and financial incentives are made available. The corporation shall fund at least one eligible project in as many counties and regions of the state as is practicable, consistent with program goals.~~

(6)~~(8)~~ Projects must be given ~~shall receive~~ priority consideration for funding if ~~where~~:

(a) The local jurisdiction has adopted, or is committed to adopting, appropriate regulatory incentives, ~~or the local jurisdiction or public-private partnership has adopted or is committed to adopting~~ local contributions or financial strategies, or other funding sources to promote the development and ongoing financial viability of such projects. Local incentives include such actions as expediting review of development orders and permits, supporting development near transportation hubs and major employment centers, and adopting land development regulations designed to allow flexibility in densities, use of accessory units, mixed-use developments, and flexible lot configurations. Financial strategies include such actions as promoting employer-assisted housing programs, providing tax increment financing, and providing land.

~~(b) Projects are innovative and include new construction or rehabilitation; mixed-income housing; commercial and housing~~

~~mixed-use elements; innovative design; green building principles; storm-resistant construction; or other elements that reduce long-term costs relating to maintenance, utilities, or insurance and promote homeownership. The program funding may not exceed the costs attributable to the portion of the project that is set aside to provide housing for the targeted population.~~

(b) ~~(c)~~ The projects ~~that~~ set aside at least 50 ~~at least 80~~ percent of the units for workforce housing ~~and at least 50 percent for essential services personnel and for projects that require the least amount of program funding compared to the overall housing costs for the project~~.

~~(9) Notwithstanding s. 163.3184(4)(b)-(d), any local government comprehensive plan amendment to implement a Community Workforce Housing Innovation Pilot Program project found consistent with this section shall be expedited as provided in this subsection. At least 30 days prior to adopting a plan amendment under this subsection, the local government shall notify the state land planning agency of its intent to adopt such an amendment, and the notice shall include its evaluation related to site suitability and availability of facilities and services. The public notice of the hearing required by s. 163.3184(11)(b)2. shall include a statement that the local government intends to use the expedited adoption process authorized by this subsection. Such amendments shall require only a single public hearing before the governing board, which~~

~~shall be an adoption hearing as described in s. 163.3184(4)(e). Any further proceedings shall be governed by s. 163.3184(5)-(13).~~

~~(10) The processing of approvals of development orders or development permits, as defined in s. 163.3164, for innovative community workforce housing projects shall be expedited.~~

(7)~~(11)~~ The corporation shall award loans with a 1 ~~interest rates set at 1 to 3~~ percent interest rate for a term that does not exceed 15 years~~, which may be made forgivable when long-term affordability is provided and when at least 80 percent of the units are set aside for workforce housing and at least 50 percent of the units are set aside for essential services personnel~~.

~~(12) All eligible applications shall:~~

~~(a) For home ownership, limit the sales price of a detached unit, townhome, or condominium unit to not more than 90 percent of the median sales price for that type of unit in that county, or the statewide median sales price for that type of unit, whichever is higher, and require that all eligible purchasers of home ownership units occupy the homes as their primary residence.~~

~~(b) For rental units, restrict rents for all workforce housing serving those with incomes at or below 120 percent of area median income at the appropriate income level using the restricted rents for the federal low-income housing tax credit~~

~~program and, for workforce housing units serving those with incomes above 120 percent of area median income, restrict rents to those established by the corporation, not to exceed 30 percent of the maximum household income adjusted to unit size.~~

~~(c) Demonstrate that the applicant is a public-private partnership in an agreement, contract, partnership agreement, memorandum of understanding, or other written instrument signed by all the project partners.~~

~~(d) Have grants, donations of land, or contributions from the public-private partnership or other sources collectively totaling at least 10 percent of the total development cost or $2 million, whichever is less. Such grants, donations of land, or contributions must be evidenced by a letter of commitment, agreement, contract, deed, memorandum of understanding, or other written instrument at the time of application. Grants, donations of land, or contributions in excess of 10 percent of the development cost shall increase the application score.~~

~~(e) Demonstrate how the applicant will use the regulatory incentives and financial strategies outlined in subsection (8) from the local jurisdiction in which the proposed project is to be located. The corporation may consult with the Department of Economic Opportunity in evaluating the use of regulatory incentives by applicants.~~

~~(f) Demonstrate that the applicant possesses title to or site control of land and evidences availability of required~~

~~infrastructure.~~

~~(g) Demonstrate the applicant's affordable housing development and management experience.~~

~~(h) Provide any research or facts available supporting the demand and need for rental or home ownership workforce housing for eligible persons in the market in which the project is proposed.~~

~~(13) Projects may include manufactured housing constructed after June 1994 and installed in accordance with mobile home installation standards of the Department of Highway Safety and Motor Vehicles.~~

(8)~~(14)~~ The corporation may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

~~(15) The corporation may use a maximum of 2 percent of the annual program appropriation for administration and compliance monitoring.~~

~~(16) The corporation shall review the success of the Community Workforce Housing Innovation Pilot Program to ascertain whether the projects financed by the program are useful in meeting the housing needs of eligible areas and shall include its findings in the annual report required under s. 420.511(3).~~

Section 12. Section 420.531, Florida Statutes, is amended to read:

420.531 Affordable Housing Catalyst Program.—

(1) The corporation shall operate the Affordable Housing

Catalyst Program for the purpose of securing the expertise necessary to provide specialized technical support to local governments and community-based organizations to implement the HOME Investment Partnership Program, State Apartment Incentive Loan Program, State Housing Initiatives Partnership Program, and other affordable housing programs. To the maximum extent feasible, the entity to provide the necessary expertise must be recognized by the Internal Revenue Service as a nonprofit tax-exempt organization. It must have as its primary mission the provision of affordable housing training and technical assistance, an ability to provide training and technical assistance statewide, and a proven track record of successfully providing training and technical assistance under the Affordable Housing Catalyst Program. The technical support shall, at a minimum, include training relating to the following key elements of the partnership programs:

(a) ~~(1)~~ Formation of local and regional housing partnerships as a means of bringing together resources to provide affordable housing.

(b) ~~(2)~~ Implementation of regulatory reforms to reduce the risk and cost of developing affordable housing.

(c) ~~(3)~~ Implementation of affordable housing programs included in local government comprehensive plans.

(d) ~~(4)~~ Compliance with requirements of federally funded housing programs.

(2) In consultation with the corporation, the entity providing statewide training and technical assistance shall convene and administer biannual regional workshops for the locally elected officials serving on affordable housing advisory committees as provided in s. 420.9076. The regional workshops may be conducted through teleconferencing or other technological means and must include processes and programming that facilitate peer-to-peer identification and sharing of best affordable housing practices among the locally elected officials. Annually, the entity providing statewide training and technical assistance must compile calendar year reports summarizing the deliberations, actions, and recommendations of each region, as well as the attendance records of locally elected officials, and must submit such reports to the President of the Senate, the Speaker of the House of Representatives, and the corporation by March 31 of the following year.

Section 13. Subsection (7) of section 420.9073, Florida Statutes, is renumbered as subsection (8), and a new subsection (7) is added to that section to read:

420.9073 Local housing distributions.—

(7) Notwithstanding subsections (1)-(4), the corporation may withhold up to 5 percent of the total amount distributed each fiscal year from the Local Government Housing Trust Fund to provide additional funding to counties and eligible municipalities for the construction of transitional housing for

persons aging out of foster care. Funds may not be used for the design or planning of transitional housing and the housing must be constructed on campus. The corporation must consult with the Department of Children and Families to create minimum criteria for such housing. Any portion of the withheld funds not distributed or committed by the end of the fiscal year shall be distributed as provided in subsections (1) and (2).

Section 14. Paragraph (a) of subsection (4) of section 420.9075, Florida Statutes, is amended, and paragraph (j) is added to subsection (10) of that section, to read:

420.9075 Local housing assistance plans; partnerships.—

(4) Each local housing assistance plan is governed by the following criteria and administrative procedures:

(a) Each county, eligible municipality, or entity formed through interlocal agreement to participate in the State Housing Initiatives Partnership Program must develop a qualification system and selection criteria for applications for awards by eligible sponsors, adopt criteria for the selection of eligible persons, and adopt a maximum award schedule or system of amounts consistent with the intent and budget of its local housing assistance plan, with ss. 420.907-420.9079, and with corporation rule. The selection criteria must provide priority to applicants who need less assistance so as to maximize the total number of applicants who may receive an award under the program.

(10) Each county or eligible municipality shall submit to

the corporation by September 15 of each year a report of its affordable housing programs and accomplishments through June 30 immediately preceding submittal of the report. The report shall be certified as accurate and complete by the local government's chief elected official or his or her designee. Transmittal of the annual report by a county's or eligible municipality's chief elected official, or his or her designee, certifies that the local housing incentive strategies, or, if applicable, the local housing incentive plan, have been implemented or are in the process of being implemented pursuant to the adopted schedule for implementation. The report must include, but is not limited to:

(j) The number of affordable housing applications that were submitted, the number of such applications that were approved, and the number of such applications that were denied.

Section 15. Subsections (2) and (4) of section 420.9076, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

420.9076 Adoption of affordable housing incentive strategies; committees.—

(2) The governing board of a county or municipality shall appoint the members of the affordable housing advisory committee. Pursuant to the terms of any interlocal agreement, a county and municipality may create and jointly appoint an advisory committee. The local action adopted pursuant to s.

420.9072 which creates the advisory committee and appoints the advisory committee members must name at least 8 but not more than 11 committee members and specify their terms. Effective October 1, 2020, the committee must consist of one locally elected official from each county or municipality participating in the State Housing Initiatives Partnership Program and one representative from at least six of the categories below:

(a) A citizen who is actively engaged in the residential home building industry in connection with affordable housing.

(b) A citizen who is actively engaged in the banking or mortgage banking industry in connection with affordable housing.

(c) A citizen who is a representative of those areas of labor actively engaged in home building in connection with affordable housing.

(d) A citizen who is actively engaged as an advocate for low-income persons in connection with affordable housing.

(e) A citizen who is actively engaged as a for-profit provider of affordable housing.

(f) A citizen who is actively engaged as a not-for-profit provider of affordable housing.

(g) A citizen who is actively engaged as a real estate professional in connection with affordable housing.

(h) A citizen who actively serves on the local planning agency pursuant to s. 163.3174. If the local planning agency is comprised of the governing board of the county or municipality,

the governing board may appoint a designee who is knowledgeable in the local planning process.

(i) A citizen who resides within the jurisdiction of the local governing body making the appointments.

(j) A citizen who represents employers within the jurisdiction.

(k) A citizen who represents essential services personnel, as defined in the local housing assistance plan.

(4) Annually ~~Triennially~~, the advisory committee shall review the established policies and procedures, ordinances, land development regulations, and adopted local government comprehensive plan of the appointing local government and shall recommend specific actions or initiatives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value. The recommendations may include the modification or repeal of existing policies, procedures, ordinances, regulations, or plan provisions; the creation of exceptions applicable to affordable housing; or the adoption of new policies, procedures, regulations, ordinances, or plan provisions, including recommendations to amend the local government comprehensive plan and corresponding regulations, ordinances, and other policies. At a minimum, each advisory committee shall submit an annual ~~a~~ report to the local governing body and to the entity providing statewide training and technical assistance for the Affordable Housing Catalyst Program

which ~~that~~ includes recommendations on~~, and triennially thereafter evaluates~~ the implementation of~~,~~ affordable housing incentives in the following areas:

(a) The processing of approvals of development orders or permits for affordable housing projects is expedited to a greater degree than other projects, as provided in s. 163.3177(6)(f)3.

(b) All allowable fee waivers provided ~~The modification of impact-fee requirements, including reduction or waiver of fees and alternative methods of fee payment~~ for the development or construction of affordable housing.

(c) The allowance of flexibility in densities for affordable housing.

(d) The reservation of infrastructure capacity for housing for very-low-income persons, low-income persons, and moderate-income persons.

(e) ~~The allowance of~~ Affordable accessory residential units ~~in residential zoning districts~~.

(f) The reduction of parking and setback requirements for affordable housing.

(g) The allowance of flexible lot configurations, including zero-lot-line configurations for affordable housing.

(h) The modification of street requirements for affordable housing.

(i) The establishment of a process by which a local

776 government considers, before adoption, policies, procedures,
777 ordinances, regulations, or plan provisions that increase the
778 cost of housing.
779 (j) The preparation of a printed inventory of locally
780 owned public lands suitable for affordable housing.
781 (k) The support of development near transportation hubs
782 and major employment centers and mixed-use developments.
783
784 The advisory committee recommendations may also include other
785 affordable housing incentives identified by the advisory
786 committee. Local governments that receive the minimum allocation
787 under the State Housing Initiatives Partnership Program shall
788 perform an ~~the~~ initial review but may elect to not perform the
789 annual ~~triennial~~ review.
790 (10) The locally elected official serving on an advisory
791 committee, or a locally elected designee, must attend biannual
792 regional workshops convened and administered under the
793 Affordable Housing Catalyst Program as provided in s.
794 420.531(2). If the locally elected official or locally elected
795 designee fails to attend three consecutive regional workshops,
796 the corporation may withhold funds pending the person's
797 attendance at the next regularly scheduled biannual meeting.
798 Section 16. Subsection (4) of section 723.011, Florida
799 Statutes, is amended to read:
800 723.011 Disclosure prior to rental of a mobile home lot;

prospectus, filing, approval.—

(4) With regard to a tenancy in existence on the effective date of this chapter, the prospectus or offering circular offered by the mobile home park owner must ~~shall~~ contain the same terms and conditions as rental agreements offered to all other mobile home owners residing in the park on the effective date of this act, excepting only rent variations based upon lot location and size, and may ~~shall~~ not require any mobile home owner to install any permanent improvements, except that the mobile home owner may be required to install permanent improvements to the mobile home as disclosed in the prospectus.

Section 17. Subsection (5) of section 723.012, Florida Statutes, is amended to read:

723.012 Prospectus or offering circular.—The prospectus or offering circular, which is required to be provided by s. 723.011, must contain the following information:

(5) A description of the recreational and other common facilities, if any, that will be used by the mobile home owners, including, but not limited to:

(a) The number of buildings and each room thereof and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, and approximate deck size and capacity and whether heated.

(c) All other facilities and permanent improvements that ~~which~~ will serve the mobile home owners.

(d) A general description of the items of personal property available for use by the mobile home owners.

(e) A general description of the days and hours that facilities will be available for use.

(f) A statement as to whether all improvements are complete and, if not, their estimated completion dates.

If a mobile home park owner intends to include additional property and mobile home lots and to increase the number of lots that will use the shared facilities of the park, the mobile home park owner must amend the prospectus to disclose such additions. If the number of mobile home lots in the park increases by more than 15 percent of the total number of lots in the original prospectus, the mobile home park owner must reasonably offset the impact of the additional lots by increasing the shared facilities. The amendment to the prospectus must include a reasonable timeframe for providing the required additional shared facilities. The costs and expenses necessary to increase the shared facilities may not be passed on or passed through to the existing mobile home owners.

Section 18. Section 723.023, Florida Statutes, is amended to read:

723.023 Mobile home owner's general obligations.—A mobile

home owner shall ~~at all times~~:

(1) At all times comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes, including compliance with all building permits and construction requirements for construction on the mobile home and lot. The home owner is responsible for all fines imposed by the local government for noncompliance with any local codes.

(2) At all times keep the mobile home lot that ~~which~~ he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes.

(3) At all times comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

(4) Receive written approval from the mobile home park owner before making any exterior modification or addition to the home.

(5) When vacating the premises, remove any debris and other property of any kind which is left on the mobile home lot.

Section 19. Subsection (5) of section 723.031, Florida Statutes, is amended to read:

723.031 Mobile home lot rental agreements.—

(5) The rental agreement must ~~shall~~ contain the lot rental amount and services included. An increase in lot rental amount upon expiration of the term of the lot rental agreement must ~~shall~~ be in accordance with ss. 723.033 and 723.037 or s. 723.059(4), whichever is applicable; ~~,~~ provided that, pursuant to s. 723.059(4), the amount of the lot rental increase is disclosed and agreed to by the purchaser, in writing. An increase in lot rental amount shall not be arbitrary or discriminatory between similarly situated tenants in the park. A lot rental amount may not be increased during the term of the lot rental agreement, except:

(a) When the manner of the increase is disclosed in a lot rental agreement with a term exceeding 12 months and which provides for such increases not more frequently than annually.

(b) For pass-through charges as defined in s. 723.003.

(c) That a charge may not be collected which results in payment of money for sums previously collected as part of the lot rental amount. The provisions hereof notwithstanding, the mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or increases of either, provided that the ad valorem property taxes, non-ad valorem assessments, and utility charges are not otherwise being collected in the remainder of the lot rental amount and provided further that the passing on of such ad valorem taxes, non-ad

valorem assessments, or utility charges, or increases of either, was disclosed prior to tenancy, was being passed on as a matter of custom between the mobile home park owner and the mobile home owner, or such passing on was authorized by law. A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a separate charge or a factor for increasing the lot rental amount in the prospectus or rental agreement. Such ad valorem taxes, non-ad valorem assessments, and utility charges shall be a part of the lot rental amount as defined by this chapter. The term "non-ad valorem assessments" has the same meaning as provided in s. 197.3632(1)(d). Other provisions of this chapter notwithstanding, pass-on charges may be passed on only within 1 year of the date a mobile home park owner remits payment of the charge. A mobile home park owner is prohibited from passing on any fine, interest, fee, or increase in a charge resulting from a park owner's payment of the charge after the date such charges become delinquent. A mobile home park owner is prohibited from charging or collecting from the mobile home owners any sum for ad valorem taxes or non-ad valorem tax charges in an amount in excess of the sums remitted by the park owner to the tax collector. Nothing herein shall prohibit a park owner and a homeowner from mutually agreeing to an alternative manner of payment to the park owner of the charges.

(d) If a notice of increase in lot rental amount is not given 90 days before the renewal date of the rental agreement, the rental agreement must remain under the same terms until a 90-day notice of increase in lot rental amount is given. The notice may provide for a rental term shorter than 1 year in order to maintain the same renewal date.

Section 20. Subsection (1) and paragraph (a) of subsection (4) of section 723.037, Florida Statutes, are amended to read:

723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.—

(1) A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. The park owner may give notice of all increases in lot rental amount for multiple anniversary dates in the same 90-day notice. The notice must ~~shall~~ identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request. However, this requirement does not authorize the release of the names, addresses, or other private information about the homeowners to the association or any other person for any other purpose. The home owner's right to the 90-day notice

may not be waived or precluded by a home owner, or the homeowners' committee, in an agreement with the park owner. Rules adopted as a result of restrictions imposed by governmental entities and required to protect the public health, safety, and welfare may be enforced prior to the expiration of the 90-day period but are not otherwise exempt from the requirements of this chapter. Pass-through charges must be separately listed as to the amount of the charge, the name of the governmental entity mandating the capital improvement, and the nature or type of the pass-through charge being levied. Notices of increase in the lot rental amount due to a pass-through charge must ~~shall~~ state the additional payment and starting and ending dates of each pass-through charge. The homeowners' association shall have no standing to challenge the increase in lot rental amount, reduction in services or utilities, or change of rules and regulations unless a majority of the affected homeowners agree, in writing, to such representation.

(4)(a) A committee, not to exceed five in number, designated by a majority of the affected mobile home owners or by the board of directors of the homeowners' association, if applicable, and the park owner shall meet, at a mutually convenient time and place no later than 60 days before the effective date of the change to discuss the reasons for the increase in lot rental amount, reduction in services or

utilities, or change in rules and regulations. The negotiating committee shall make a written request for a meeting with the park owner or subdivision developer to discuss those matters addressed in the 90-day notice, and may include in the request a listing of any other issue, with supporting documentation, that the committee intends to raise and discuss at the meeting. The committee shall address all lot rental amount increases that are specified in the notice of lot rental amount increase, regardless of the effective date of the increase.

This subsection is not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions prior to the parties proceeding to mediation of any dispute.

Section 21. Subsections (5) and (6) are added to section 723.041, Florida Statutes, to read:

723.041 Entrance fees; refunds; exit fees prohibited; replacement homes.—

(5) A mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, and built before the park was damaged or destroyed.

(6) This section does not limit the regulation of the uniform firesafety standards established under s. 633.206, but supersedes any other density, separation, setback, or lot size

regulation adopted after initial permitting and construction of the mobile home park.

Section 22. Section 723.042, Florida Statutes, is amended to read:

723.042 Provision of improvements.—A ~~No~~ person may not ~~shall~~ be required by a mobile home park owner or developer, as a condition of residence in the mobile home park, to provide any improvement unless the requirement is disclosed pursuant to s. 723.012(7) ~~s. 723.011~~ prior to occupancy in the mobile home park.

Section 23. Subsections (3) and (4) of section 723.059, Florida Statutes, are amended to read:

723.059 ~~Rights of~~ Purchaser of a mobile home within a mobile home park.—

(3) The purchaser of a mobile home who intends to become ~~becomes~~ a resident of the mobile home park in accordance with this section has the right to assume the remainder of the term of any rental agreement then in effect between the mobile home park owner and the seller and may assume the seller's prospectus. However, nothing herein shall prohibit a mobile home park owner from offering the purchaser of a mobile home any approved prospectus ~~shall be entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient~~.

(4) However, nothing herein shall be construed to prohibit

a mobile home park owner from increasing the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the mobile home park owner, so long as such increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the purchaser's ~~initial offering circular or~~ prospectus and this act.

Section 24. Paragraph (d) of subsection (1) of section 723.061, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

723.061 Eviction; grounds, proceedings.—

(1) A mobile home park owner may evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home only on one or more of the following grounds:

(d) Change in use of the land comprising the mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use, if:

1. The park owner gives written notice to the homeowners' association formed and operating under ss. 723.075-723.079 of its right to purchase the mobile home park, if the land comprising the mobile home park is changing use from mobile home lot rentals to a different use, at the price and under the terms and conditions set forth in the written notice.

a. The notice shall be delivered to the officers of the homeowners' association by United States mail. Within 45 days

after the date of mailing of the notice, the homeowners' association may execute and deliver a contract to the park owner to purchase the mobile home park at the price and under the terms and conditions set forth in the notice. If the contract between the park owner and the homeowners' association is not executed and delivered to the park owner within the 45-day period, the park owner is under no further obligation to the homeowners' association except as provided in sub-subparagraph b.

b. If the park owner elects to offer or sell the mobile home park at a price lower than the price specified in her or his initial notice to the officers of the homeowners' association, the homeowners' association has an additional 10 days to meet the revised price, terms, and conditions of the park owner by executing and delivering a revised contract to the park owner.

c. The park owner is not obligated under this subparagraph or s. 723.071 to give any other notice to, or to further negotiate with, the homeowners' association for the sale of the mobile home park to the homeowners' association after 6 months after the date of the mailing of the initial notice under sub-subparagraph a.

2. The park owner gives the affected mobile home owners and tenants at least 6 months' notice of the eviction due to the projected change in use and of their need to secure other

accommodations. Within 20 days after giving an eviction notice to a mobile home owner, the park owner must provide the division with a copy of the notice. The division must provide the executive director of the Florida Mobile Home Relocation Corporation with a copy of the notice.

a. The notice of eviction due to a change in use of the land must include in a font no smaller than the body of the notice the following statement:

YOU MAY BE ENTITLED TO COMPENSATION FROM THE FLORIDA MOBILE HOME RELOCATION TRUST FUND, ADMINISTERED BY THE FLORIDA MOBILE HOME RELOCATION CORPORATION (FMHRC). FMHRC CONTACT INFORMATION IS AVAILABLE FROM THE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.

b. The park owner may not give a notice of increase in lot rental amount within 90 days before giving notice of a change in use.

(5) A park owner who accepts payment of any portion of the lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement due to a violation under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(e) does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, but not for any subsequent or continuing

noncompliance. Any rent so received must be accounted for at the final hearing.

Section 25. Subsection (1) of section 723.076, Florida Statutes, is amended to read:

723.076 Incorporation; notification of park owner.—

(1) Upon receipt of its certificate of incorporation, the homeowners' association shall notify the park owner in writing of such incorporation and shall advise the park owner of the names and addresses of the officers of the homeowners' association by personal delivery upon the park owner's representative as designated in the prospectus or by certified mail, return receipt requested. Thereafter, the homeowners' association shall notify the park owner in writing by certified mail, return receipt requested, of any change of names and addresses of its president or registered agent. Upon election or appointment of new officers or members, the homeowners' association shall notify the park owner in writing by certified mail, return receipt requested, of the names and addresses of the new officers or members.

Section 26. Paragraphs (b) through (e) of subsection (2) of section 723.078, Florida Statutes, are amended, and paragraph (i) of that subsection is reenacted, to read:

723.078 Bylaws of homeowners' associations.—

(2) The bylaws shall provide and, if they do not, shall be deemed to include, the following provisions:

(b) Quorum; voting requirements; proxies.—

1. Unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum. Decisions shall be made by a majority of members represented at a meeting at which a quorum is present.

2.a. A member may not vote by general proxy but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and any other matters for which this chapter requires or permits a vote of members. A~~,~~ ~~except that no~~ proxy, limited or general, may not be used in the election of board members in general elections or elections to fill vacancies caused by recall, resignation, or otherwise. Board members must be elected by written ballot or by voting in person. If a mobile home or subdivision lot is owned jointly, the owners of the mobile home or subdivision lot must be counted as one for the purpose of determining the number of votes required for a majority. Only one vote per mobile home or subdivision lot shall be counted. Any number greater than 50 percent of the total number of votes constitutes a majority. Notwithstanding this section, members may vote in person at member meetings or by secret ballot, including absentee ballots, as defined by the division.

b. Elections shall be decided by a plurality of the ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A member may not allow any other person to cast his or her ballot, and any ballots improperly cast are invalid. An election is not required unless there are more candidates nominated than vacancies that exist on the board.

c. Each member or other eligible person who desires to be a candidate for the board of directors shall appear on the ballot in alphabetical order by surname. A ballot may not indicate if any of the candidates are incumbent on the board. All ballots must be uniform in appearance. Write-in candidates and more than one vote per candidate per ballot are not allowed. A ballot may not provide a space for the signature of, or any other means of identifying, a voter. If a ballot contains more votes than vacancies or fewer votes than vacancies, the ballot is invalid unless otherwise stated in the bylaws.

d. An impartial committee shall be responsible for overseeing the election process and complying with all ballot requirements. For purposes of this section, the term "impartial committee" means a committee whose members do not include any of the following people or their spouses:

(I) Current board members.

(II) Current association officers.

(III) Candidates for the association or board.

e. The association bylaws shall provide a method for determining the winner of an election in which two or more candidates for the same position receive the same number of votes.

f. The division shall adopt procedural rules to govern elections, including, but not limited to, rules for providing notice by electronic transmission and rules for maintaining the secrecy of ballots.

3. A proxy is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the member executing it.

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

(c) Board of directors' and committee meetings.—

1. Meetings of the board of directors and meetings of its committees at which a quorum is present shall be open to all members. Notwithstanding any other provision of law, the requirement that board meetings and committee meetings be open

to the members does not apply to meetings between the park owner and the board of directors or any of the board's committees, board or committee meetings held for the purpose of discussing personnel matters, or meetings between the board or a committee and the association's attorney, with respect to potential or pending litigation, when ~~where~~ the meeting is held for the purpose of seeking or rendering legal advice, and when ~~where~~ the contents of the discussion would otherwise be governed by the attorney-client privilege. Notice of all meetings open to members shall be posted in a conspicuous place upon the park property at least 48 hours in advance, except in an emergency. Notice of any meeting in which dues ~~assessments against members~~ are to be considered for any reason shall specifically contain a statement that dues ~~assessments~~ will be considered and the nature of such dues ~~assessments~~.

2. A board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time telephonic, electronic, or video communication counts toward a quorum, and such member may vote as if physically present. A speaker shall be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by members present at a meeting.

3. Members of the board of directors may use e-mail as a means of communication but may not cast a vote on an association

matter via e-mail.

4. The right to attend meetings of the board of directors and its committees includes the right to speak at such meetings with reference to all designated agenda items. The association may adopt reasonable written rules governing the frequency, duration, and manner of members' statements. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. Any member may tape record or videotape meetings of the board of directors and its committees, except meetings between the board of directors or its appointed homeowners' committee and the park owner. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting.

5. Except as provided in paragraph (i), a vacancy occurring on the board of directors may be filled by the affirmative vote of the majority of the remaining directors, even though the remaining directors constitute less than a quorum; by the sole remaining director; if the vacancy is not so filled or if no director remains, by the members; or, on the application of any person, by the circuit court of the county in which the registered office of the corporation is located.

6. The term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors

are elected. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors, but only for the term of office continuing until the next election of directors by the members.

7. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

8.a. The officers and directors of the association have a fiduciary relationship to the members.

b. A director and committee member shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.

9. In discharging his or her duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

a. One or more officers or employees of the corporation who the director reasonably believes to be reliable and competent in the matters presented;

b. Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or

c. A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

10. A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subparagraph 9. unwarranted.

11. A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

(d) Member meetings.—Members shall meet at least once each calendar year, and the meeting shall be the annual meeting. All members of the board of directors shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. The bylaws shall not restrict any member desiring to be a candidate for board membership from being nominated from the floor. All nominations from the floor must be made at a duly noticed meeting of the members held at least 27 ~~30~~ days before the annual meeting. The bylaws shall provide the method for calling the meetings of the members, including annual meetings. The method shall provide at least 14 days' written notice to each member in advance of the meeting and require the posting in a conspicuous place on the park property of a notice of the meeting at least 14 days prior to the meeting. The right to receive written notice of

membership meetings may be waived in writing by a member. Unless waived, the notice of the annual meeting shall be mailed, hand delivered, or electronically transmitted to each member, and shall constitute notice. Unless otherwise stated in the bylaws, an officer of the association shall provide an affidavit affirming that the notices were mailed, ~~or~~ hand delivered, or provided by electronic transmission in accordance with ~~the provisions of~~ this section to each member at the address last furnished to the corporation. These meeting requirements do not prevent members from waiving notice of meetings or from acting by written agreement without meetings, if allowed by the bylaws.

(e) Minutes of meetings.—

1. Notwithstanding any other provision of law, the minutes of board or committee meetings that are closed to members are privileged and confidential and are not available for inspection or photocopying.

2. Minutes of all meetings of members of an association and meetings open to members of~~,~~ the board of directors~~,~~ and a committee of the board must be maintained in written form and approved by the members, board, or committee, as applicable. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.

3.~~2.~~ All approved minutes of open meetings of members, committees, and the board of directors shall be kept in a

businesslike manner and shall be available for inspection by members, or their authorized representatives, and board members at reasonable times. The association shall retain these minutes within this state for ~~a period of~~ at least 5 ~~7~~ years.

(i) Recall of board members.—Any member of the board of directors may be recalled and removed from office with or without cause by the vote of or agreement in writing by a majority of all members. A special meeting of the members to recall a member or members of the board of directors may be called by 10 percent of the members giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

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

2. If the proposed recall is by an agreement in writing by a majority of all members, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of directors shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or shall proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration pursuant to the procedures of s. 723.1255. For purposes of this paragraph, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall of a member of the board, the recall shall be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator,

the division may take action under s. 723.006. A member so recalled shall deliver to the board any and all records and property of the association in the member's possession within 5 full business days after the effective date of the recall.

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

5. If the board fails to duly notice and hold the required meeting or fails to file the required petition, the member's representative may file a petition pursuant to s. 723.1255 challenging the board's failure to act. The petition must be filed within 60 days after expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

6. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any other provision of this chapter. If vacancies occur on the board as a

result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

7. A board member who has been recalled may file a petition pursuant to s. 723.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The association and the member's representative shall be named as the respondents.

8. The division may not accept for filing a recall petition, whether or not filed pursuant to this subsection, and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

Section 27. Paragraphs (d) and (f) through (i) of subsection (4) and subsection (5) of section 723.079, Florida Statutes, are amended to read:

723.079 Powers and duties of homeowners' association.—

(4) The association shall maintain the following items, when applicable, which constitute the official records of the

association:

(d) The approved minutes of all meetings of the members of an association and meetings open for members of~~,~~ the board of directors, and committees of the board, which minutes must be retained within this ~~the~~ state for at least 5 ~~7~~ years.

(f) All of the association's insurance policies or copies thereof, which must be retained within this state for at least 5 ~~7~~ years after the expiration date of the policy.

(g) A copy of all contracts or agreements to which the association is a party, including, without limitation, any written agreements with the park owner, lease, or other agreements or contracts under which the association or its members has any obligation or responsibility, which must be retained within this state for at least 5 ~~7~~ years after the expiration date of the contract or agreement.

(h) The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained within this state for a ~~period of~~ at least 5 ~~7~~ years. The financial and accounting records must include:

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

2. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay dues or

assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

3. All tax returns, financial statements, and financial reports of the association.

4. Any other records that identify, measure, record, or communicate financial information.

(i) All other written records of the association not specifically included in the foregoing which are related to the operation of the association must be retained within this state for at least 5 years or at least 5 years after the expiration date, as applicable.

(5) The official records shall be ~~maintained within the state for at least 7 years and shall be~~ made available to a member for inspection or photocopying within 20 ~~10~~ business days after receipt by the board or its designee of a written request submitted by certified mail, return receipt requested. The requirements of this subsection are satisfied by having a copy of the official records available for inspection or copying in the park or, at the option of the association, by making the records available to a member electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide a member with copies on request during the

inspection if the entire request is no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(a) The failure of an association to provide access to the records within 20 ~~10~~ business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(b) A member who is denied access to official records is entitled to ~~the actual damages or minimum~~ damages for the association's willful failure to comply with this subsection in the amount of~~. The minimum damages are to be~~ $10 per calendar day up to 10 days, not to exceed $100. The calculation for damages begins ~~to begin~~ on the 21st ~~11th~~ business day after receipt of the written request, submitted by certified mail, return receipt requested.

(c) A dispute between a member and an association regarding inspecting or photocopying official records must be

submitted to mandatory binding arbitration with the division, and the arbitration must be conducted pursuant to s. 723.1255 and procedural rules adopted by the division.

(d) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a member to demonstrate a proper purpose for the inspection, state a reason for the inspection, or limit a member's right to inspect records to less than 1 business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds 30 minutes and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members.

Notwithstanding this paragraph, the following records are not accessible to members or home owners:

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

2. E-mail addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a home owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, lot designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to home owners a directory containing the name, park address, and telephone number of each home owner. However, a home owner may exclude his or her telephone number from the directory by so requesting in writing to the association. The association is not liable for the disclosure of information that is protected under

this subparagraph if the information is included in an official record of the association and is voluntarily provided by a home owner and not requested by the association.

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

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

Section 28. Section 723.1255, Florida Statutes, is amended to read:

723.1255 Alternative resolution of recall, election, and inspection and photocopying of official records disputes.—

(1) A dispute between a mobile home owner and a homeowners' association regarding the election and recall of officers or directors under s. 723.078(2)(b) or regarding the inspection and photocopying of official records under s. 723.079(5) must be submitted to mandatory binding arbitration with the division. The arbitration shall be conducted in accordance with this section and the procedural rules adopted by the division.

(2) Each party shall be responsible for paying its own attorney fees, expert and investigator fees, and associated costs. The cost of the arbitrators shall be divided equally

between the parties regardless of the outcome.

(3) The division shall adopt procedural rules to govern mandatory binding arbitration proceedings ~~The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall adopt rules of procedure to govern binding recall arbitration proceedings~~.

Section 29. For the purpose of incorporating the amendment made by this act to section 420.5087, Florida Statutes, in a reference thereto, paragraph (i) of subsection (22) of section 420.507, Florida Statutes, is reenacted to read:

420.507 Powers of the corporation.—The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(22) To develop and administer the State Apartment Incentive Loan Program. In developing and administering that program, the corporation may:

(i) Establish, by rule, the procedure for competitively evaluating and selecting all applications for funding based on the criteria set forth in s. 420.5087(6)(c), determining actual loan amounts, making and servicing loans, and exercising the powers authorized in this subsection.

Section 30. For the purpose of incorporating the amendment

made by this act to section 420.5095, Florida Statutes, in a reference thereto, subsection (2) of section 193.018, Florida Statutes, is reenacted to read:

193.018 Land owned by a community land trust used to provide affordable housing; assessment; structural improvements, condominium parcels, and cooperative parcels.—

(2) A community land trust may convey structural improvements, condominium parcels, or cooperative parcels, that are located on specific parcels of land that are identified by a legal description contained in and subject to a ground lease having a term of at least 99 years, for the purpose of providing affordable housing to natural persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, or the income limits for workforce housing, as defined in s. 420.5095(3). A community land trust shall retain a preemptive option to purchase any structural improvements, condominium parcels, or cooperative parcels on the land at a price determined by a formula specified in the ground lease which is designed to ensure that the structural improvements, condominium parcels, or cooperative parcels remain affordable.

Section 31. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

HB 1339 by Rep. Yarborough
Housing

AMENDMENT SUMMARY
February 27, 2020

Amendment 1 by Rep. Yarborough (Strike-all amendment):
The strike-all amendment:

- Includes "private entities" in addition to counties and municipalities for purposes of issuing bonds under the Florida Interlocal Cooperation Act.
- Provides that a building official may not audit a construction project being inspected by a private inspector more than four times a year instead of current law, which prohibits a building official from auditing a private inspector more than four times a year regardless of the project.
- Amends the definition of "affordable" to also include housing provided by a not-for-profit corporation, that is for low-income persons and low-income households that provides treatment for persons who suffer from mental health, substance abuse, or domestic violence; and that provides on-premises social and community support services.
- Clarifies that for purposes of the construction of transitional housing for persons aging out of foster care, "on campus" means on a campus that provides housing for persons in foster care or persons aging out of foster care.

The remainder of the bill's provisions are unchanged by the strike-all amendment.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative Yarborough offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) is added to section 125.01055, Florida Statutes, to read:

125.01055 Affordable housing.—

(4) Notwithstanding any other law, local ordinance, or regulation to the contrary, the board of county commissioners may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use.

Section 2. Paragraph (d) of subsection (7) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(7)

(d) Notwithstanding the provisions of paragraph (c), any separate legal entity created pursuant to this section and controlled by the municipalities or counties of this state or by one or more municipality and one or more county of this state, the membership of which consists or is to consist of municipalities only, counties only, or one or more municipality and one or more county, may, for the purpose of financing or refinancing any capital projects, exercise all powers in connection with the authorization, issuance, and sale of bonds. Notwithstanding any limitations provided in this section, all of the privileges, benefits, powers, and terms of part I of chapter 125, part II of chapter 166, and ~~part I of~~ chapter 159 shall be fully applicable to such entity. Bonds issued by such entity shall be deemed issued on behalf of the counties, ~~or~~ municipalities, or private entities which enter into loan agreements with such entity as provided in this paragraph. Any loan agreement executed pursuant to a program of such entity shall be governed by the provisions of part I of chapter 159 or, in the case of counties, part I of chapter 125, or in the case of municipalities and charter counties, part II of chapter 166. Proceeds of bonds issued by such entity may be loaned to counties or municipalities of this state or a combination of municipalities and counties, whether or not such counties or

municipalities are also members of the entity issuing the bonds, or to private entities for "self-liquidating" projects as defined in s. 159.02, whether or not such private entities are located within the jurisdictional boundaries of a county or municipality that is a member of the entity issuing the bonds. The issuance of bonds by such entity to fund a loan program to make loans to municipalities, ~~or~~ counties, or private entities or a combination of municipalities, ~~and~~ counties, and private entities with one another for capital projects to be identified subsequent to the issuance of the bonds to fund such loan programs is deemed to be a paramount public purpose. Any entity so created may also issue bond anticipation notes, as provided by s. 215.431, in connection with the authorization, issuance, and sale of such bonds. In addition, the governing body of such legal entity may also authorize bonds to be issued and sold from time to time and may delegate, to such officer, official, or agent of such legal entity as the governing body of such legal entity may select, the power to determine the time; manner of sale, public or private; maturities; rate or rates of interest, which may be fixed or may vary at such time or times and in accordance with a specified formula or method of determination; and other terms and conditions as may be deemed appropriate by the officer, official, or agent so designated by the governing body of such legal entity. However, the amounts and maturities of such bonds and the interest rate or rates of such bonds shall

be within the limits prescribed by the governing body of such legal entity and its resolution delegating to such officer, official, or agent the power to authorize the issuance and sale of such bonds. A local government self-insurance fund established under this section may financially guarantee bonds or bond anticipation notes issued or loans made under this subsection. Bonds issued pursuant to this paragraph may be validated as provided in chapter 75. The complaint in any action to validate such bonds shall be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 shall be published only in Leon County, and the complaint and order of the circuit court shall be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county where the public agencies which were initially a party to the agreement are located. Notice of such proceedings shall be published in the manner and the time required by s. 75.06 in Leon County and in each county where the public agencies which were initially a party to the agreement are located. Obligations of any county or municipality pursuant to a loan agreement as described in this paragraph may be validated as provided in chapter 75.

Section 3. Subsections (1), (3), and (4) of section 163.31771, Florida Statutes, are amended to read:

163.31771 Accessory dwelling units.—

(1) The Legislature finds that the median price of homes

in this state has increased steadily over the last decade and at a greater rate of increase than the median income in many urban areas. The Legislature finds that the cost of rental housing has also increased steadily and the cost often exceeds an amount that is affordable to extremely-low-income, very-low-income, low-income, or moderate-income persons and has resulted in a critical shortage of affordable rentals in many urban areas in the state. This shortage of affordable rentals constitutes a threat to the health, safety, and welfare of the residents of the state. Therefore, the Legislature finds that it serves an important public purpose to require ~~encourage~~ the permitting of accessory dwelling units in single-family residential areas in order to increase the availability of affordable rentals for extremely-low-income, very-low-income, low-income, or moderate-income persons.

(3) Each ~~Upon a finding by a local government that there is a shortage of affordable rentals within its jurisdiction, the~~ local government shall ~~may~~ adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use, except in an area of critical state concern where the state caps the number of new housing units which may be built within a year.

(4) ~~If the local government adopts an ordinance under this section,~~ An application for a building permit to construct an accessory dwelling unit must include an affidavit from the

applicant which attests that the unit will be rented at an affordable rate to an extremely-low-income, very-low-income, low-income, or moderate-income person or persons.

Section 4. Subsection (10) is added to section 163.31801, Florida Statutes, to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(10) In addition to the items that must be reported in the annual financial reports under s. 218.32, each county, municipality, and special district must report all of the following data on each impact fee charged:

(a) The specific purpose of the impact fee, including the specific infrastructure needs to be met such as transportation, parks, water, sewer, and schools.

(b) The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered fees based on the number of bedrooms, or tiered fees based on the square footage.

(c) The amount assessed for each purpose and for each type of dwelling.

(d) The total amount of impact fees charged by type of dwelling.

Section 5. Subsection (4) is added to section 166.04151, Florida Statutes, to read:

166.04151 Affordable housing.—

(4) Notwithstanding any other law, local ordinance, or regulation to the contrary, the governing body of a municipality may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use.

Section 6. Paragraph (h) of subsection (3) of section 320.77, Florida Statutes, is amended to read:

320.77 License required of mobile home dealers.—

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:

(h) Certification by the applicant:

1. That the location is a permanent one, not a tent or a temporary stand or other temporary quarters.~~; and,~~

2. Except in the case of a mobile home broker, that the location affords sufficient ~~unoccupied~~ space to display ~~store all mobile~~ homes ~~offered and displayed~~ for sale. A space to display a manufactured home as a model home satisfies this requirement.~~; and that~~ The location must be ~~is~~ a suitable place in which the applicant can in good faith carry on business and keep and maintain books, records, and files necessary to conduct such business, which must ~~will~~ be available at all reasonable hours to inspection by the department or any of its inspectors or other employees.

This paragraph does ~~subsection shall~~ not preclude a licensed mobile home dealer from displaying and offering for sale mobile homes in a mobile home park.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

Section 7. Paragraph (j) of subsection (3) of section 320.771, Florida Statutes, is amended to read:

320.771 License required of recreational vehicle dealers.—

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:

(j) A statement that the applicant is insured under a garage liability insurance policy, which shall include, at a minimum, $25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and $10,000 personal injury protection, if the applicant is to be licensed as a dealer in, or intends to sell, recreational vehicles. However, a garage liability policy is not required for the licensure of a mobile home dealer who sells only park

trailers.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

Section 8. Paragraph (c) of subsection (2) of section 320.822, Florida Statutes, is amended to read:

320.822 Definitions; ss. 320.822-320.862.—In construing ss. 320.822-320.862, unless the context otherwise requires, the following words or phrases have the following meanings:

(2) "Code" means the appropriate standards found in:

(c) The Mobile and Manufactured Home Repair and Remodeling Code and the Used Recreational Vehicle Code.

Section 9. Subsection (2) of section 320.8232, Florida Statutes, is amended to read:

320.8232 Establishment of uniform standards for used recreational vehicles and repair and remodeling code for mobile homes.—

(2) The Mobile and Manufactured Home ~~provisions of the~~ Repair and Remodeling Code must be a uniform code, must ~~shall~~ ensure safe and livable housing, and may ~~shall~~ not be more stringent than those standards required to be met in the manufacture of mobile homes. Such code must ~~provisions shall~~

include~~, but not be limited to,~~ standards for structural adequacy, plumbing, heating, electrical systems, and fire and life safety. All repairs and remodeling of mobile and manufactured homes must be performed in accordance with department rules.

Section 10. Subsection (9) of section 367.022, Florida Statutes, is amended, and subsection (14) is added to that section, to read:

367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

(9) Any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water and wastewater service plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.

(14) The owner of a mobile home park operating both as a mobile home park and a mobile home subdivision, as those terms are defined in s. 723.003, who provides service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation.

Section 11. Paragraph (c) of subsection (6) of section 420.5087, Florida Statutes, is amended to read:

420.5087 State Apartment Incentive Loan Program.—There is

hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for lifesafety, building preservation, health, sanitation, or security-related repairs or improvements, the following provisions shall apply:

(c) The corporation shall provide by rule for the establishment of a review committee for the competitive evaluation and selection of applications submitted in this program. The review committee must use evaluation criteria that include, ~~including,~~ but are not limited to, the following ~~criteria~~:

1. Tenant income and demographic targeting objectives of the corporation.

2. Targeting objectives of the corporation which will ensure an equitable distribution of loans between rural and urban areas.

3. Sponsor's agreement to reserve the units for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, for a time period that exceeds the minimum required by federal law or this part.

4. Sponsor's agreement to reserve more than:

a. Twenty percent of the units in the project for persons or families who have incomes that do not exceed 50 percent of the state or local median income, whichever is higher; or

b. Forty percent of the units in the project for persons or families who have incomes that do not exceed 60 percent of the state or local median income, whichever is higher, without requiring a greater amount of the loans as provided in this section.

5. Provision for tenant counseling.

6. Sponsor's agreement to accept rental assistance certificates or vouchers as payment for rent.

7. Projects requiring the least amount of a state apartment incentive loan compared to overall project cost, except that the share of the loan attributable to units serving extremely-low-income persons must be excluded from this requirement.

8. Local government contributions and local government comprehensive planning and activities that promote affordable housing and policies that promote access to public transportation, reduce the need for onsite parking, and expedite permits for affordable housing projects.

9. Project feasibility.

10. Economic viability of the project.

11. Commitment of first mortgage financing.

12. Sponsor's prior experience. This criterion may not require a sponsor to have prior experience with the corporation to qualify for financing under the program.

13. Sponsor's ability to proceed with construction.

14. Projects that directly implement or assist welfare-to-work transitioning.

15. Projects that reserve units for extremely-low-income persons.

16. Projects that include green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.

17. Job-creation rate of the developer and general contractor, as provided in s. 420.507(47).

Section 12. Section 420.5095, Florida Statutes, is amended to read:

420.5095 Community Workforce Housing Loan ~~Innovation Pilot~~ Program.—

(1) The Legislature finds and declares that recent rapid increases in the median purchase price of a home and the cost of rental housing have far outstripped the increases in median income in the state, ~~preventing essential services personnel from living in the communities where they serve and thereby~~ creating the need for innovative solutions for the provision of housing opportunities ~~for essential services personnel~~.

(2) The Community Workforce Housing Loan ~~Innovation Pilot~~ Program is created to provide ~~affordable rental and home ownership community~~ workforce housing for persons ~~essential services personnel~~ affected by the high cost of housing~~, using regulatory incentives and state and local funds to promote local public-private partnerships and leverage government and private resources~~.

(3) For purposes of this section, the term~~:~~

~~(a)~~ "workforce housing" means housing affordable to natural persons or families whose total annual household income does not exceed 80 ~~140~~ percent of the area median income, adjusted for household size, or 120 ~~150~~ percent of area median income, adjusted for household size, in areas of critical state concern designated under s. 380.05, for which the Legislature has declared its intent to provide affordable housing, and areas that were designated as areas of critical state concern for at least 20 consecutive years before ~~prior to~~ removal of the designation.

~~(b) "Public-private partnership" means any form of business entity that includes substantial involvement of at least one county, one municipality, or one public sector entity, such as a school district or other unit of local government in which the project is to be located, and at least one private sector for-profit or not-for-profit business or charitable entity, and may be any form of business entity, including a~~

~~joint venture or contractual agreement.~~

(4) The Florida Housing Finance Corporation may ~~is authorized to~~ provide loans under the ~~Community Workforce Housing Innovation Pilot~~ program ~~loans~~ to applicants ~~an applicant~~ for construction ~~or rehabilitation~~ of workforce housing ~~in eligible areas. This funding is intended to be used with other public and private sector resources~~.

(5) The corporation shall establish a loan application process under s. 420.5087 ~~by rule which includes selection criteria, an application review process, and a funding process~~. ~~The corporation shall also establish an application review committee that may include up to three private citizens representing the areas of housing or real estate development, banking, community planning, or other areas related to the development or financing of workforce and affordable housing.~~

~~(a) The selection criteria and application review process must include a procedure for curing errors in the loan applications which do not make a substantial change to the proposed project.~~

~~(b) To achieve the goals of the pilot program, the application review committee may approve or reject loan applications or responses to questions raised during the review of an application due to the insufficiency of information provided.~~

~~(c) The application review committee shall make~~

~~recommendations concerning program participation and funding to the corporation's board of directors.~~

~~(d) The board of directors shall approve or reject loan applications, determine the tentative loan amount available to each applicant, and rank all approved applications.~~

~~(e) The board of directors shall decide which approved applicants will become program participants and determine the maximum loan amount for each program participant.~~

~~(6) The corporation shall provide incentives for local governments in eligible areas to use local affordable housing funds, such as those from the State Housing Initiatives Partnership Program, to assist in meeting the affordable housing needs of persons eligible under this program. Local governments are authorized to use State Housing Initiative Partnership Program funds for persons or families whose total annual household income does not exceed:~~

~~(a) One hundred and forty percent of the area median income, adjusted for household size; or~~

~~(b) One hundred and fifty percent of the area median income, adjusted for household size, in areas that were designated as areas of critical state concern for at least 20 consecutive years prior to the removal of the designation and in areas of critical state concern, designated under s. 380.05, for which the Legislature has declared its intent to provide affordable housing.~~

~~(7) Funding shall be targeted to innovative projects in areas where the disparity between the area median income and the median sales price for a single-family home is greatest, and where population growth as a percentage rate of increase is greatest. The corporation may also fund projects in areas where innovative regulatory and financial incentives are made available. The corporation shall fund at least one eligible project in as many counties and regions of the state as is practicable, consistent with program goals.~~

(6)~~(8)~~ Projects must be given ~~shall receive~~ priority consideration for funding if ~~where~~:

(a) The local jurisdiction has adopted, or is committed to adopting, appropriate regulatory incentives, ~~or the local jurisdiction or public-private partnership has adopted or is committed to adopting~~ local contributions or financial strategies, or other funding sources to promote the development and ongoing financial viability of such projects. Local incentives include such actions as expediting review of development orders and permits, supporting development near transportation hubs and major employment centers, and adopting land development regulations designed to allow flexibility in densities, use of accessory units, mixed-use developments, and flexible lot configurations. Financial strategies include such actions as promoting employer-assisted housing programs, providing tax increment financing, and providing land.

~~(b) Projects are innovative and include new construction or rehabilitation; mixed-income housing; commercial and housing mixed-use elements; innovative design; green building principles; storm-resistant construction; or other elements that reduce long-term costs relating to maintenance, utilities, or insurance and promote homeownership. The program funding may not exceed the costs attributable to the portion of the project that is set aside to provide housing for the targeted population.~~

(b)~~(c)~~ The projects ~~that~~ set aside at least 50 ~~at least 80~~ percent of the units for workforce housing ~~and at least 50 percent for essential services personnel and for projects that require the least amount of program funding compared to the overall housing costs for the project~~.

~~(9) Notwithstanding s. 163.3184(4)(b)-(d), any local government comprehensive plan amendment to implement a Community Workforce Housing Innovation Pilot Program project found consistent with this section shall be expedited as provided in this subsection. At least 30 days prior to adopting a plan amendment under this subsection, the local government shall notify the state land planning agency of its intent to adopt such an amendment, and the notice shall include its evaluation related to site suitability and availability of facilities and services. The public notice of the hearing required by s. 163.3184(11)(b)2. shall include a statement that the local government intends to use the expedited adoption process~~

~~authorized by this subsection. Such amendments shall require only a single public hearing before the governing board, which shall be an adoption hearing as described in s. 163.3184(4)(c). Any further proceedings shall be governed by s. 163.3184(5)-(13).~~

~~(10) The processing of approvals of development orders or development permits, as defined in s. 163.3164, for innovative community workforce housing projects shall be expedited.~~

(7) ~~(11)~~ The corporation shall award loans with a 1 ~~interest rates set at 1 to 3~~ percent interest rate for a term that does not exceed 15 years~~, which may be made forgivable when long-term affordability is provided and when at least 80 percent of the units are set aside for workforce housing and at least 50 percent of the units are set aside for essential services personnel~~.

~~(12) All eligible applications shall:~~

~~(a) For home ownership, limit the sales price of a detached unit, townhome, or condominium unit to not more than 90 percent of the median sales price for that type of unit in that county, or the statewide median sales price for that type of unit, whichever is higher, and require that all eligible purchasers of home ownership units occupy the homes as their primary residence.~~

~~(b) For rental units, restrict rents for all workforce housing serving those with incomes at or below 120 percent of~~

~~area median income at the appropriate income level using the restricted rents for the federal low-income housing tax credit program and, for workforce housing units serving those with incomes above 120 percent of area median income, restrict rents to those established by the corporation, not to exceed 30 percent of the maximum household income adjusted to unit size.~~

~~(c) Demonstrate that the applicant is a public-private partnership in an agreement, contract, partnership agreement, memorandum of understanding, or other written instrument signed by all the project partners.~~

~~(d) Have grants, donations of land, or contributions from the public-private partnership or other sources collectively totaling at least 10 percent of the total development cost or $2 million, whichever is less. Such grants, donations of land, or contributions must be evidenced by a letter of commitment, agreement, contract, deed, memorandum of understanding, or other written instrument at the time of application. Grants, donations of land, or contributions in excess of 10 percent of the development cost shall increase the application score.~~

~~(e) Demonstrate how the applicant will use the regulatory incentives and financial strategies outlined in subsection (8) from the local jurisdiction in which the proposed project is to be located. The corporation may consult with the Department of Economic Opportunity in evaluating the use of regulatory incentives by applicants.~~

~~(f) Demonstrate that the applicant possesses title to or site control of land and evidences availability of required infrastructure.~~

~~(g) Demonstrate the applicant's affordable housing development and management experience.~~

~~(h) Provide any research or facts available supporting the demand and need for rental or home ownership workforce housing for eligible persons in the market in which the project is proposed.~~

~~(13) Projects may include manufactured housing constructed after June 1994 and installed in accordance with mobile home installation standards of the Department of Highway Safety and Motor Vehicles.~~

(8) ~~(14)~~ The corporation may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

~~(15) The corporation may use a maximum of 2 percent of the annual program appropriation for administration and compliance monitoring.~~

~~(16) The corporation shall review the success of the Community Workforce Housing Innovation Pilot Program to ascertain whether the projects financed by the program are useful in meeting the housing needs of eligible areas and shall include its findings in the annual report required under s. 420.511(3).~~

Section 13. Section 420.531, Florida Statutes, is amended to read:

420.531 Affordable Housing Catalyst Program.—

(1) The corporation shall operate the Affordable Housing Catalyst Program for the purpose of securing the expertise necessary to provide specialized technical support to local governments and community-based organizations to implement the HOME Investment Partnership Program, State Apartment Incentive Loan Program, State Housing Initiatives Partnership Program, and other affordable housing programs. To the maximum extent feasible, the entity to provide the necessary expertise must be recognized by the Internal Revenue Service as a nonprofit tax-exempt organization. It must have as its primary mission the provision of affordable housing training and technical assistance, an ability to provide training and technical assistance statewide, and a proven track record of successfully providing training and technical assistance under the Affordable Housing Catalyst Program. The technical support shall, at a minimum, include training relating to the following key elements of the partnership programs:

(a) ~~(1)~~ Formation of local and regional housing partnerships as a means of bringing together resources to provide affordable housing.

(b) ~~(2)~~ Implementation of regulatory reforms to reduce the risk and cost of developing affordable housing.

(c) ~~(3)~~ Implementation of affordable housing programs included in local government comprehensive plans.

(d)~~(4)~~ Compliance with requirements of federally funded housing programs.

(2) In consultation with the corporation, the entity providing statewide training and technical assistance shall convene and administer biannual regional workshops for the locally elected officials serving on affordable housing advisory committees as provided in s. 420.9076. The regional workshops may be conducted through teleconferencing or other technological means and must include processes and programming that facilitate peer-to-peer identification and sharing of best affordable housing practices among the locally elected officials. Annually, the entity providing statewide training and technical assistance must compile calendar year reports summarizing the deliberations, actions, and recommendations of each region, as well as the attendance records of locally elected officials, and must submit such reports to the President of the Senate, the Speaker of the House of Representatives, and the corporation by March 31 of the following year.

Section 14. Subsection (2) of section 420.9071, Florida Statutes, is amended to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(2) "Affordable" means that monthly rents or monthly mortgage payments including taxes and insurance do not exceed 30 percent of that amount which represents the percentage of the

567 median annual gross income for the households as indicated in
568 subsection (19), subsection (20), or subsection (28). However,
569 it is not the intent to limit an individual household's ability
570 to devote more than 30 percent of its income for housing, and
571 housing for which a household devotes more than 30 percent of
572 its income shall be deemed affordable if the first institutional
573 mortgage lender is satisfied that the household can afford
574 mortgage payments in excess of the 30 percent benchmark. The
575 term also includes housing provided by a not-for-profit
576 corporation that derives at least 75 percent of its annual
577 revenues from contracts or services provided to a state or
578 federal agency, for low-income persons and low-income households
579 that provides treatment for persons who suffer from mental
580 health, substance abuse, or domestic violence; and that provides
581 on-premises social and community support services including, job
582 training, life skills training, alcohol and substance abuse
583 disorder treatment, child care, and client case management
584 services.
585 Section 15. Subsection (7) of section 420.9073, Florida
586 Statutes, is renumbered as subsection (8), and a new subsection
587 (7) is added to that section to read:
588 420.9073 Local housing distributions.—
589 (7) Notwithstanding subsections (1)-(4), the corporation
590 may withhold up to 5 percent of the total amount distributed
591 each fiscal year from the Local Government Housing Trust Fund to

provide additional funding to counties and eligible municipalities for the construction of transitional housing for persons aging out of foster care. Funds may not be used for the design or planning of transitional housing and the housing must be constructed on campus that provides housing for persons in foster care or persons aging out of foster care pursuant to s. 409.1451. The corporation must consult with the Department of Children and Families to create minimum criteria for such housing. Any portion of the withheld funds not distributed or committed by the end of the fiscal year shall be distributed as provided in subsections (1) and (2).

Section 16. Paragraph (a) of subsection (4) of section 420.9075, Florida Statutes, is amended, and paragraph (j) is added to subsection (10) of that section, to read:

420.9075 Local housing assistance plans; partnerships.—

(4) Each local housing assistance plan is governed by the following criteria and administrative procedures:

(a) Each county, eligible municipality, or entity formed through interlocal agreement to participate in the State Housing Initiatives Partnership Program must develop a qualification system and selection criteria for applications for awards by eligible sponsors, adopt criteria for the selection of eligible persons, and adopt a maximum award schedule or system of amounts consistent with the intent and budget of its local housing assistance plan, with ss. 420.907-420.9079, and with corporation

rule. The selection criteria must provide priority to applicants who need less assistance so as to maximize the total number of applicants who may receive an award under the program.

(10) Each county or eligible municipality shall submit to the corporation by September 15 of each year a report of its affordable housing programs and accomplishments through June 30 immediately preceding submittal of the report. The report shall be certified as accurate and complete by the local government's chief elected official or his or her designee. Transmittal of the annual report by a county's or eligible municipality's chief elected official, or his or her designee, certifies that the local housing incentive strategies, or, if applicable, the local housing incentive plan, have been implemented or are in the process of being implemented pursuant to the adopted schedule for implementation. The report must include, but is not limited to:

(j) The number of affordable housing applications that were submitted, the number of such applications that were approved, and the number of such applications that were denied.

Section 17. Subsections (2) and (4) of section 420.9076, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

420.9076 Adoption of affordable housing incentive strategies; committees.—

(2) The governing board of a county or municipality shall

appoint the members of the affordable housing advisory committee. Pursuant to the terms of any interlocal agreement, a county and municipality may create and jointly appoint an advisory committee. The local action adopted pursuant to s. 420.9072 which creates the advisory committee and appoints the advisory committee members must name at least 8 but not more than 11 committee members and specify their terms. Effective October 1, 2020, the committee must consist of one locally elected official from each county or municipality participating in the State Housing Initiatives Partnership Program and one representative from at least six of the categories below:

(a) A citizen who is actively engaged in the residential home building industry in connection with affordable housing.

(b) A citizen who is actively engaged in the banking or mortgage banking industry in connection with affordable housing.

(c) A citizen who is a representative of those areas of labor actively engaged in home building in connection with affordable housing.

(d) A citizen who is actively engaged as an advocate for low-income persons in connection with affordable housing.

(e) A citizen who is actively engaged as a for-profit provider of affordable housing.

(f) A citizen who is actively engaged as a not-for-profit provider of affordable housing.

(g) A citizen who is actively engaged as a real estate

667 professional in connection with affordable housing.
668 (h) A citizen who actively serves on the local planning
669 agency pursuant to s. 163.3174. If the local planning agency is
670 comprised of the governing board of the county or municipality,
671 the governing board may appoint a designee who is knowledgeable
672 in the local planning process.
673 (i) A citizen who resides within the jurisdiction of the
674 local governing body making the appointments.
675 (j) A citizen who represents employers within the
676 jurisdiction.
677 (k) A citizen who represents essential services personnel,
678 as defined in the local housing assistance plan.
679 (4) Annually ~~Triennially~~, the advisory committee shall
680 review the established policies and procedures, ordinances, land
681 development regulations, and adopted local government
682 comprehensive plan of the appointing local government and shall
683 recommend specific actions or initiatives to encourage or
684 facilitate affordable housing while protecting the ability of
685 the property to appreciate in value. The recommendations may
686 include the modification or repeal of existing policies,
687 procedures, ordinances, regulations, or plan provisions; the
688 creation of exceptions applicable to affordable housing; or the
689 adoption of new policies, procedures, regulations, ordinances,
690 or plan provisions, including recommendations to amend the local
691 government comprehensive plan and corresponding regulations,

ordinances, and other policies. At a minimum, each advisory committee shall submit an annual ~~a~~ report to the local governing body and to the entity providing statewide training and technical assistance for the Affordable Housing Catalyst Program which ~~that~~ includes recommendations on~~, and triennially thereafter evaluates~~ the implementation of~~,~~ affordable housing incentives in the following areas:

(a) The processing of approvals of development orders or permits for affordable housing projects is expedited to a greater degree than other projects, as provided in s. 163.3177(6)(f)3.

(b) All allowable fee waivers provided ~~The modification of impact-fee requirements, including reduction or waiver of fees and alternative methods of fee payment~~ for the development or construction of affordable housing.

(c) The allowance of flexibility in densities for affordable housing.

(d) The reservation of infrastructure capacity for housing for very-low-income persons, low-income persons, and moderate-income persons.

(e) ~~The allowance of~~ Affordable accessory residential units ~~in residential zoning districts~~.

(f) The reduction of parking and setback requirements for affordable housing.

(g) The allowance of flexible lot configurations,

including zero-lot-line configurations for affordable housing.

(h) The modification of street requirements for affordable housing.

(i) The establishment of a process by which a local government considers, before adoption, policies, procedures, ordinances, regulations, or plan provisions that increase the cost of housing.

(j) The preparation of a printed inventory of locally owned public lands suitable for affordable housing.

(k) The support of development near transportation hubs and major employment centers and mixed-use developments.

The advisory committee recommendations may also include other affordable housing incentives identified by the advisory committee. Local governments that receive the minimum allocation under the State Housing Initiatives Partnership Program shall perform an ~~the~~ initial review but may elect to not perform the annual ~~triennial~~ review.

(10) The locally elected official serving on an advisory committee, or a locally elected designee, must attend biannual regional workshops convened and administered under the Affordable Housing Catalyst Program as provided in s. 420.531(2). If the locally elected official or locally elected designee fails to attend three consecutive regional workshops, the corporation may withhold funds pending the person's

attendance at the next regularly scheduled biannual meeting.

Section 18. Subsection (18) of section 553.791, Florida Statutes, is amended to read:

553.791 Alternative plans review and inspection.—

(18) Each local building code enforcement agency may audit the performance of building code inspection services by private providers operating within the local jurisdiction. However, a building or structure ~~the same private provider~~ may not be audited more than four times in a calendar year unless the local building official determines a condition of the ~~a~~ building or structure constitutes an immediate threat to public safety and welfare. Work on a building or structure may proceed after inspection and approval by a private provider if the provider has given notice of the inspection pursuant to subsection (9) and, subsequent to such inspection and approval, the work shall not be delayed for completion of an inspection audit by the local building code enforcement agency.

Section 19. Subsection (4) of section 723.011, Florida Statutes, is amended to read:

723.011 Disclosure prior to rental of a mobile home lot; prospectus, filing, approval.—

(4) With regard to a tenancy in existence on the effective date of this chapter, the prospectus or offering circular offered by the mobile home park owner must ~~shall~~ contain the same terms and conditions as rental agreements offered to all

other mobile home owners residing in the park on the effective date of this act, excepting only rent variations based upon lot location and size, and may ~~shall~~ not require any mobile home owner to install any permanent improvements, except that the mobile home owner may be required to install permanent improvements to the mobile home as disclosed in the prospectus.

Section 20. Subsection (5) of section 723.012, Florida Statutes, is amended to read:

723.012 Prospectus or offering circular.—The prospectus or offering circular, which is required to be provided by s. 723.011, must contain the following information:

(5) A description of the recreational and other common facilities, if any, that will be used by the mobile home owners, including, but not limited to:

(a) The number of buildings and each room thereof and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, and approximate deck size and capacity and whether heated.

(c) All other facilities and permanent improvements that ~~which~~ will serve the mobile home owners.

(d) A general description of the items of personal property available for use by the mobile home owners.

(e) A general description of the days and hours that

facilities will be available for use.

(f) A statement as to whether all improvements are complete and, if not, their estimated completion dates.

If a mobile home park owner intends to include additional property and mobile home lots and to increase the number of lots that will use the shared facilities of the park, the mobile home park owner must amend the prospectus to disclose such additions. If the number of mobile home lots in the park increases by more than 15 percent of the total number of lots in the original prospectus, the mobile home park owner must reasonably offset the impact of the additional lots by increasing the shared facilities. The amendment to the prospectus must include a reasonable timeframe for providing the required additional shared facilities. The costs and expenses necessary to increase the shared facilities may not be passed on or passed through to the existing mobile home owners.

Section 21. Section 723.023, Florida Statutes, is amended to read:

723.023 Mobile home owner's general obligations.—A mobile home owner shall ~~at all times~~:

(1) At all times comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes, including compliance with all building permits and construction requirements for construction

on the mobile home and lot. The home owner is responsible for all fines imposed by the local government for noncompliance with any local codes.

(2) At all times keep the mobile home lot that ~~which~~ he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes.

(3) At all times comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

(4) Receive written approval from the mobile home park owner before making any exterior modification or addition to the home.

(5) When vacating the premises, remove any debris and other property of any kind which is left on the mobile home lot.

Section 22. Subsection (5) of section 723.031, Florida Statutes, is amended to read:

723.031 Mobile home lot rental agreements.—

(5) The rental agreement must ~~shall~~ contain the lot rental amount and services included. An increase in lot rental amount upon expiration of the term of the lot rental agreement must ~~shall~~ be in accordance with ss. 723.033 and 723.037 or s. 723.059(4), whichever is applicable; ~~,~~ provided that, pursuant to

s. 723.059(4), the amount of the lot rental increase is disclosed and agreed to by the purchaser, in writing. An increase in lot rental amount shall not be arbitrary or discriminatory between similarly situated tenants in the park. A lot rental amount may not be increased during the term of the lot rental agreement, except:

(a) When the manner of the increase is disclosed in a lot rental agreement with a term exceeding 12 months and which provides for such increases not more frequently than annually.

(b) For pass-through charges as defined in s. 723.003.

(c) That a charge may not be collected which results in payment of money for sums previously collected as part of the lot rental amount. The provisions hereof notwithstanding, the mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or increases of either, provided that the ad valorem property taxes, non-ad valorem assessments, and utility charges are not otherwise being collected in the remainder of the lot rental amount and provided further that the passing on of such ad valorem taxes, non-ad valorem assessments, or utility charges, or increases of either, was disclosed prior to tenancy, was being passed on as a matter of custom between the mobile home park owner and the mobile home owner, or such passing on was authorized by law. A park owner is deemed to have disclosed the passing on of ad valorem property

taxes and non-ad valorem assessments if ad valorem property taxes or non-ad valorem assessments were disclosed as a separate charge or a factor for increasing the lot rental amount in the prospectus or rental agreement. Such ad valorem taxes, non-ad valorem assessments, and utility charges shall be a part of the lot rental amount as defined by this chapter. The term "non-ad valorem assessments" has the same meaning as provided in s. 197.3632(1)(d). Other provisions of this chapter notwithstanding, pass-on charges may be passed on only within 1 year of the date a mobile home park owner remits payment of the charge. A mobile home park owner is prohibited from passing on any fine, interest, fee, or increase in a charge resulting from a park owner's payment of the charge after the date such charges become delinquent. A mobile home park owner is prohibited from charging or collecting from the mobile home owners any sum for ad valorem taxes or non-ad valorem tax charges in an amount in excess of the sums remitted by the park owner to the tax collector. Nothing herein shall prohibit a park owner and a homeowner from mutually agreeing to an alternative manner of payment to the park owner of the charges.

(d) If a notice of increase in lot rental amount is not given 90 days before the renewal date of the rental agreement, the rental agreement must remain under the same terms until a 90-day notice of increase in lot rental amount is given. The notice may provide for a rental term shorter than 1 year in

order to maintain the same renewal date.

Section 23. Subsection (1) and paragraph (a) of subsection (4) of section 723.037, Florida Statutes, are amended to read:

723.037 Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation.—

(1) A park owner shall give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. The park owner may give notice of all increases in lot rental amount for multiple anniversary dates in the same 90-day notice. The notice must ~~shall~~ identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request. However, this requirement does not authorize the release of the names, addresses, or other private information about the homeowners to the association or any other person for any other purpose. The home owner's right to the 90-day notice may not be waived or precluded by a home owner, or the homeowners' committee, in an agreement with the park owner. Rules adopted as a result of restrictions imposed by governmental entities and required to protect the public health, safety, and welfare may be enforced prior to the expiration of

the 90-day period but are not otherwise exempt from the requirements of this chapter. Pass-through charges must be separately listed as to the amount of the charge, the name of the governmental entity mandating the capital improvement, and the nature or type of the pass-through charge being levied. Notices of increase in the lot rental amount due to a pass-through charge must ~~shall~~ state the additional payment and starting and ending dates of each pass-through charge. The homeowners' association shall have no standing to challenge the increase in lot rental amount, reduction in services or utilities, or change of rules and regulations unless a majority of the affected homeowners agree, in writing, to such representation.

(4)(a) A committee, not to exceed five in number, designated by a majority of the affected mobile home owners or by the board of directors of the homeowners' association, if applicable, and the park owner shall meet, at a mutually convenient time and place no later than 60 days before the effective date of the change to discuss the reasons for the increase in lot rental amount, reduction in services or utilities, or change in rules and regulations. The negotiating committee shall make a written request for a meeting with the park owner or subdivision developer to discuss those matters addressed in the 90-day notice, and may include in the request a listing of any other issue, with supporting documentation, that

the committee intends to raise and discuss at the meeting. The committee shall address all lot rental amount increases that are specified in the notice of lot rental amount increase, regardless of the effective date of the increase.

This subsection is not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions prior to the parties proceeding to mediation of any dispute.

Section 24. Subsections (5) and (6) are added to section 723.041, Florida Statutes, to read:

723.041 Entrance fees; refunds; exit fees prohibited; replacement homes.—

(5) A mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, and built before the park was damaged or destroyed.

(6) This section does not limit the regulation of the uniform firesafety standards established under s. 633.206, but supersedes any other density, separation, setback, or lot size regulation adopted after initial permitting and construction of the mobile home park.

Section 25. Section 723.042, Florida Statutes, is amended to read:

723.042 Provision of improvements.—A ~~No~~ person may not

~~shall~~ be required by a mobile home park owner or developer, as a condition of residence in the mobile home park, to provide any improvement unless the requirement is disclosed pursuant to s. 723.012(7) ~~s. 723.011~~ prior to occupancy in the mobile home park.

Section 26. Subsections (3) and (4) of section 723.059, Florida Statutes, are amended to read:

723.059 ~~Rights of~~ Purchaser of a mobile home within a mobile home park.—

(3) The purchaser of a mobile home who intends to become ~~becomes~~ a resident of the mobile home park in accordance with this section has the right to assume the remainder of the term of any rental agreement then in effect between the mobile home park owner and the seller and may assume the seller's prospectus. However, nothing herein shall prohibit a mobile home park owner from offering the purchaser of a mobile home any approved prospectus ~~shall be entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient~~.

(4) However, nothing herein shall be construed to prohibit a mobile home park owner from increasing the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the mobile home park owner, so long as such increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a

manner consistent with the purchaser's ~~initial offering circular or~~ prospectus and this act.

Section 27. Paragraph (d) of subsection (1) of section 723.061, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

723.061 Eviction; grounds, proceedings.—

(1) A mobile home park owner may evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home only on one or more of the following grounds:

(d) Change in use of the land comprising the mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use, if:

1. The park owner gives written notice to the homeowners' association formed and operating under ss. 723.075-723.079 of its right to purchase the mobile home park, if the land comprising the mobile home park is changing use from mobile home lot rentals to a different use, at the price and under the terms and conditions set forth in the written notice.

a. The notice shall be delivered to the officers of the homeowners' association by United States mail. Within 45 days after the date of mailing of the notice, the homeowners' association may execute and deliver a contract to the park owner to purchase the mobile home park at the price and under the terms and conditions set forth in the notice. If the contract between the park owner and the homeowners' association is not

executed and delivered to the park owner within the 45-day period, the park owner is under no further obligation to the homeowners' association except as provided in sub-subparagraph b.

b. If the park owner elects to offer or sell the mobile home park at a price lower than the price specified in her or his initial notice to the officers of the homeowners' association, the homeowners' association has an additional 10 days to meet the revised price, terms, and conditions of the park owner by executing and delivering a revised contract to the park owner.

c. The park owner is not obligated under this subparagraph or s. 723.071 to give any other notice to, or to further negotiate with, the homeowners' association for the sale of the mobile home park to the homeowners' association after 6 months after the date of the mailing of the initial notice under sub-subparagraph a.

2. The park owner gives the affected mobile home owners and tenants at least 6 months' notice of the eviction due to the projected change in use and of their need to secure other accommodations. Within 20 days after giving an eviction notice to a mobile home owner, the park owner must provide the division with a copy of the notice. The division must provide the executive director of the Florida Mobile Home Relocation Corporation with a copy of the notice.

a. The notice of eviction due to a change in use of the land must include in a font no smaller than the body of the notice the following statement:

YOU MAY BE ENTITLED TO COMPENSATION FROM THE FLORIDA MOBILE HOME RELOCATION TRUST FUND, ADMINISTERED BY THE FLORIDA MOBILE HOME RELOCATION CORPORATION (FMHRC). FMHRC CONTACT INFORMATION IS AVAILABLE FROM THE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.

b. The park owner may not give a notice of increase in lot rental amount within 90 days before giving notice of a change in use.

(5) A park owner who accepts payment of any portion of the lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement due to a violation under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(e) does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, but not for any subsequent or continuing noncompliance. Any rent so received must be accounted for at the final hearing.

Section 28. Subsection (1) of section 723.076, Florida Statutes, is amended to read:

723.076 Incorporation; notification of park owner.—

(1) Upon receipt of its certificate of incorporation, the homeowners' association shall notify the park owner in writing of such incorporation and shall advise the park owner of the names and addresses of the officers of the homeowners' association by personal delivery upon the park owner's representative as designated in the prospectus or by certified mail, return receipt requested. Thereafter, the homeowners' association shall notify the park owner in writing by certified mail, return receipt requested, of any change of names and addresses of its president or registered agent. Upon election or appointment of new officers or board members, the homeowners' association shall notify the park owner in writing by certified mail, return receipt requested, of the names and addresses of the new officers or board members.

Section 29. Paragraphs (b) through (e) of subsection (2) of section 723.078, Florida Statutes, are amended, and paragraph (i) of that subsection is reenacted, to read:

723.078 Bylaws of homeowners' associations.—

(2) The bylaws shall provide and, if they do not, shall be deemed to include, the following provisions:

(b) Quorum; voting requirements; proxies.—

1. Unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum. Decisions shall be made by a majority of members represented at a meeting at which a quorum is present.

2.a. A member may not vote by general proxy but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and any other matters for which this chapter requires or permits a vote of members. A~~, except that no~~ proxy, limited or general, may not be used in the election of board members in general elections or elections to fill vacancies caused by recall, resignation, or otherwise. Board members must be elected by written ballot or by voting in person. If a mobile home or subdivision lot is owned jointly, the owners of the mobile home or subdivision lot must be counted as one for the purpose of determining the number of votes required for a majority. Only one vote per mobile home or subdivision lot shall be counted. Any number greater than 50 percent of the total number of votes constitutes a majority. Notwithstanding this section, members may vote in person at member meetings or by secret ballot, including absentee ballots, as defined by the division.

b. Elections shall be decided by a plurality of the ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A member may not allow any other person to cast his or her ballot, and any ballots improperly cast are

invalid. An election is not required unless there are more candidates nominated than vacancies that exist on the board.

c. Each member or other eligible person who desires to be a candidate for the board of directors shall appear on the ballot in alphabetical order by surname. A ballot may not indicate if any of the candidates are incumbent on the board. All ballots must be uniform in appearance. Write-in candidates and more than one vote per candidate per ballot are not allowed. A ballot may not provide a space for the signature of, or any other means of identifying, a voter. If a ballot contains more votes than vacancies or fewer votes than vacancies, the ballot is invalid unless otherwise stated in the bylaws.

d. An impartial committee shall be responsible for overseeing the election process and complying with all ballot requirements. For purposes of this section, the term "impartial committee" means a committee whose members do not include any of the following people or their spouses:

(I) Current board members.

(II) Current association officers.

(III) Candidates for the association or board.

e. The association bylaws shall provide a method for determining the winner of an election in which two or more candidates for the same position receive the same number of votes.

f. The division shall adopt procedural rules to govern

1142 elections, including, but not limited to, rules for providing
1143 notice by electronic transmission and rules for maintaining the
1144 secrecy of ballots.
1145 3. A proxy is effective only for the specific meeting for
1146 which originally given and any lawfully adjourned meetings
1147 thereof. In no event shall any proxy be valid for a period
1148 longer than 90 days after the date of the first meeting for
1149 which it was given. Every proxy shall be revocable at any time
1150 at the pleasure of the member executing it.
1151 4. A member of the board of directors or a committee may
1152 submit in writing his or her agreement or disagreement with any
1153 action taken at a meeting that the member did not attend. This
1154 agreement or disagreement may not be used as a vote for or
1155 against the action taken and may not be used for the purposes of
1156 creating a quorum.
1157 (c) Board of directors' and committee meetings.—
1158 1. Meetings of the board of directors and meetings of its
1159 committees at which a quorum is present shall be open to all
1160 members. Notwithstanding any other provision of law, the
1161 requirement that board meetings and committee meetings be open
1162 to the members does not apply to meetings between the park owner
1163 and the board of directors or any of the board's committees,
1164 board or committee meetings held for the purpose of discussing
1165 personnel matters, or meetings between the board or a committee
1166 and the association's attorney, with respect to potential or

pending litigation, when ~~where~~ the meeting is held for the purpose of seeking or rendering legal advice, and when ~~where~~ the contents of the discussion would otherwise be governed by the attorney-client privilege. Notice of all meetings open to members shall be posted in a conspicuous place upon the park property at least 48 hours in advance, except in an emergency. Notice of any meeting in which dues ~~assessments against members~~ are to be considered for any reason shall specifically contain a statement that dues ~~assessments~~ will be considered and the nature of such dues ~~assessments~~.

2. A board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time telephonic, electronic, or video communication counts toward a quorum, and such member may vote as if physically present. A speaker shall be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by members present at a meeting.

3. Members of the board of directors may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.

4. The right to attend meetings of the board of directors and its committees includes the right to speak at such meetings with reference to all designated agenda items. The association may adopt reasonable written rules governing the frequency,

duration, and manner of members' statements. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. Any member may tape record or videotape meetings of the board of directors and its committees, except meetings between the board of directors or its appointed homeowners' committee and the park owner. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting.

5. Except as provided in paragraph (i), a vacancy occurring on the board of directors may be filled by the affirmative vote of the majority of the remaining directors, even though the remaining directors constitute less than a quorum; by the sole remaining director; if the vacancy is not so filled or if no director remains, by the members; or, on the application of any person, by the circuit court of the county in which the registered office of the corporation is located.

6. The term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors, but only for the term of office continuing until the next election of directors by the members.

7. A vacancy that will occur at a specific later date, by

reason of a resignation effective at a later date, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

8.a. The officers and directors of the association have a fiduciary relationship to the members.

b. A director and committee member shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.

9. In discharging his or her duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

a. One or more officers or employees of the corporation who the director reasonably believes to be reliable and competent in the matters presented;

b. Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or

c. A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

10. A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes

reliance otherwise permitted by subparagraph 9. unwarranted.

11. A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

(d) Member meetings.—Members shall meet at least once each calendar year, and the meeting shall be the annual meeting. All members of the board of directors shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. The bylaws shall not restrict any member desiring to be a candidate for board membership from being nominated from the floor. All nominations from the floor must be made at a duly noticed meeting of the members held at least 27 ~~30~~ days before the annual meeting. The bylaws shall provide the method for calling the meetings of the members, including annual meetings. The method shall provide at least 14 days' written notice to each member in advance of the meeting and require the posting in a conspicuous place on the park property of a notice of the meeting at least 14 days prior to the meeting. The right to receive written notice of membership meetings may be waived in writing by a member. Unless waived, the notice of the annual meeting shall be mailed, hand delivered, or electronically transmitted to each member, and shall constitute notice. Unless otherwise stated in the bylaws, an officer of the association shall provide an affidavit

affirming that the notices were mailed, ~~or~~ hand delivered, or provided by electronic transmission in accordance with ~~the provisions of~~ this section to each member at the address last furnished to the corporation. These meeting requirements do not prevent members from waiving notice of meetings or from acting by written agreement without meetings, if allowed by the bylaws.

(e) Minutes of meetings.—

1. Notwithstanding any other provision of law, the minutes of board or committee meetings that are closed to members are privileged and confidential and are not available for inspection or photocopying.

2. Minutes of all meetings of members of an association and meetings open to members of~~,~~ the board of directors~~,~~ and a committee of the board must be maintained in written form and approved by the members, board, or committee, as applicable. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.

3.~~2.~~ All approved minutes of open meetings of members, committees, and the board of directors shall be kept in a businesslike manner and shall be available for inspection by members, or their authorized representatives, and board members at reasonable times. The association shall retain these minutes within this state for ~~a period of~~ at least 5 ~~7~~ years.

(i) Recall of board members.—Any member of the board of

directors may be recalled and removed from office with or without cause by the vote of or agreement in writing by a majority of all members. A special meeting of the members to recall a member or members of the board of directors may be called by 10 percent of the members giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

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

2. If the proposed recall is by an agreement in writing by a majority of all members, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of directors

shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or shall proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration pursuant to the procedures of s. 723.1255. For purposes of this paragraph, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall of a member of the board, the recall shall be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action under s. 723.006. A member so recalled shall deliver to the board any and all records and property of the association in the member's possession within 5 full business days after the effective date of the recall.

4. If the board fails to duly notice and hold a board

meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the members' recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board all records and property of the association.

5. If the board fails to duly notice and hold the required meeting or fails to file the required petition, the member's representative may file a petition pursuant to s. 723.1255 challenging the board's failure to act. The petition must be filed within 60 days after expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

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

as the operation of the association during the period after a recall but before the recall election.

7. A board member who has been recalled may file a petition pursuant to s. 723.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The association and the member's representative shall be named as the respondents.

8. The division may not accept for filing a recall petition, whether or not filed pursuant to this subsection, and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

Section 30. Paragraphs (d) and (f) through (i) of subsection (4) and subsection (5) of section 723.079, Florida Statutes, are amended to read:

723.079 Powers and duties of homeowners' association.—

(4) The association shall maintain the following items, when applicable, which constitute the official records of the association:

(d) The approved minutes of all meetings of the members <u>of an association and meetings open for members of</u>~~,~~ the board of directors, and committees of the board, which minutes must be retained within <u>this</u> ~~the~~ state for at least <u>5</u> ~~7~~ years.

(f) All of the association's insurance policies or copies thereof, which must be retained within this state for at least 5 ~~7~~ years after the expiration date of the policy.

(g) A copy of all contracts or agreements to which the association is a party, including, without limitation, any written agreements with the park owner, lease, or other agreements or contracts under which the association or its members has any obligation or responsibility, which must be retained within this state for at least 5 ~~7~~ years after the expiration date of the contract or agreement.

(h) The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained within this state for a ~~period of~~ at least 5 ~~7~~ years. The financial and accounting records must include:

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

2. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay dues or assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

3. All tax returns, financial statements, and financial reports of the association.

4. Any other records that identify, measure, record, or communicate financial information.

(i) All other written records of the association not specifically included in the foregoing which are related to the operation of the association must be retained within this state for at least 5 years or at least 5 years after the expiration date, as applicable.

(5) The official records shall be ~~maintained within the state for at least 7 years and shall be~~ made available to a member for inspection or photocopying within 20 ~~10~~ business days after receipt by the board or its designee of a written request submitted by certified mail, return receipt requested. The requirements of this subsection are satisfied by having a copy of the official records available for inspection or copying in the park or, at the option of the association, by making the records available to a member electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide a member with copies on request during the inspection if the entire request is no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of

the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(a) The failure of an association to provide access to the records within 20 ~~10~~ business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(b) A member who is denied access to official records is entitled to ~~the actual damages or minimum~~ damages for the association's willful failure to comply with this subsection in the amount of~~. The minimum damages are to be~~ $10 per calendar day up to 10 days, not to exceed $100. The calculation for damages begins ~~to begin~~ on the 21st ~~11th~~ business day after receipt of the written request, submitted by certified mail, return receipt requested.

(c) A dispute between a member and an association regarding inspecting or photocopying official records must be submitted to mandatory binding arbitration with the division, and the arbitration must be conducted pursuant to s. 723.1255 and procedural rules adopted by the division.

(d) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be

inspected, and manner of inspections, but may not require a member to demonstrate a proper purpose for the inspection, state a reason for the inspection, or limit a member's right to inspect records to less than 1 business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds 30 minutes and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or home owners:

1. A record protected by the lawyer-client privilege as described in s. 90.502 and a record protected by the work-product privilege, including, but not limited to, a record

prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, or in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

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

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

Section 31. Section 723.1255, Florida Statutes, is amended to read:

723.1255 Alternative resolution of recall, election, and inspection and photocopying of official records disputes.—

(1) A dispute between a mobile home owner and a homeowners' association regarding the election and recall of officers or directors under s. 723.078(2)(b) or regarding the inspection and photocopying of official records under s. 723.079(5) must be submitted to mandatory binding arbitration with the division. The arbitration shall be conducted in accordance with this section and the procedural rules adopted by the division.

(2) Each party shall be responsible for paying its own attorney fees, expert and investigator fees, and associated costs. The cost of the arbitrators shall be divided equally between the parties regardless of the outcome.

(3) The division shall adopt procedural rules to govern mandatory binding arbitration proceedings ~~The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall adopt~~

~~rules of procedure to govern binding recall arbitration proceedings~~.

Section 32. For the purpose of incorporating the amendment made by this act to section 420.5087, Florida Statutes, in a reference thereto, paragraph (i) of subsection (22) of section 420.507, Florida Statutes, is reenacted to read:

420.507 Powers of the corporation.—The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(22) To develop and administer the State Apartment Incentive Loan Program. In developing and administering that program, the corporation may:

(i) Establish, by rule, the procedure for competitively evaluating and selecting all applications for funding based on the criteria set forth in s. 420.5087(6)(c), determining actual loan amounts, making and servicing loans, and exercising the powers authorized in this subsection.

Section 33. For the purpose of incorporating the amendment made by this act to section 420.5095, Florida Statutes, in a reference thereto, subsection (2) of section 193.018, Florida Statutes, is reenacted to read:

193.018 Land owned by a community land trust used to provide affordable housing; assessment; structural improvements,

condominium parcels, and cooperative parcels.—

(2) A community land trust may convey structural improvements, condominium parcels, or cooperative parcels, that are located on specific parcels of land that are identified by a legal description contained in and subject to a ground lease having a term of at least 99 years, for the purpose of providing affordable housing to natural persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, or the income limits for workforce housing, as defined in s. 420.5095(3). A community land trust shall retain a preemptive option to purchase any structural improvements, condominium parcels, or cooperative parcels on the land at a price determined by a formula specified in the ground lease which is designed to ensure that the structural improvements, condominium parcels, or cooperative parcels remain affordable.

Section 34. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:

An act relating to community development and housing; amending s. 125.01055, F.S.; authorizing a board of county commissioners to approve development of

affordable housing on any parcel zoned for residential, commercial, or industrial use; amending s. 163.01, F.S.; amending the Florida Interlocal Cooperation Act; amending s. 163.31771, F.S.; revising legislative findings; requiring local governments to adopt ordinances that allow accessory dwelling units in any area zoned for single-family residential use; providing an exception; amending s. 163.31801, F.S.; requiring counties, municipalities, and special districts to include certain data relating to impact fees in their annual financial reports; amending s. 166.04151, F.S.; authorizing governing bodies of municipalities to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use; amending s. 320.77, F.S.; revising a certification requirement for mobile home dealer applicants relating to the applicant's business location; amending s. 320.771, F.S.; exempting certain recreational vehicle dealer applicants from a garage liability insurance requirement; amending s. 320.822, F.S.; revising the definition of the term "code"; amending s. 320.8232, F.S.; revising applicable standards for the repair and remodeling of mobile and manufactured homes; amending s. 367.022, F.S.; exempting certain mobile home park

owners and mobile home subdivision owners from regulation by the Florida Public Service Commission relating to water and wastewater service; amending s. 420.5087, F.S.; revising the criteria used by a review committee when evaluating and selecting specified applications for state apartment incentive loans; amending s. 420.5095, F.S.; renaming the Community Workforce Housing Innovation Pilot Program as the Community Workforce Housing Loan Program; requiring the program to provide workforce housing; revising the definition of the term "workforce housing"; deleting the definition of the term "public-private partnership"; authorizing the Florida Housing Finance Corporation to provide loans under the program to applicants for construction of workforce housing; requiring the corporation to establish a certain loan application process; deleting provisions requiring the corporation to provide incentives for local governments to use certain funds; requiring projects to receive priority consideration for funding under certain circumstances; deleting a provision providing for the expedition of local government comprehensive plan amendments to implement a program project; requiring that the corporation award loans at a specified interest rate and for a limited term;

conforming provisions to changes made by the act; amending s. 420.531, F.S.; specifying that technical support provided to local governments and community-based organizations includes implementation of the State Apartment Incentive Loan Program; requiring the entity providing training and technical assistance to convene and administer biannual regional workshops; requiring such entity to annually compile and submit certain information to the Legislature and the corporation by a specified date; amending s. 420.9073, F.S.; authorizing the corporation to withhold a certain portion of funds distributed from the Local Government Housing Trust Fund to be used for certain transitional housing; prohibiting such funds from being used for specified purposes; requiring the corporation to consult with the Department of Children and Families to create minimum criteria for such housing; providing for the distribution of withheld funds; amending s. 420.9071, F.S.; revising a definition; amending s. 420.9075, F.S.; requiring an optimization plan to be included in local housing assistance plan criteria; revising requirements for reports submitted by counties and certain municipalities to the corporation; amending s. 420.9076, F.S.; revising the membership of local

affordable housing advisory committees beginning on a specified date; requiring the committees to perform specified duties annually instead of triennially; requiring locally elected officials serving on advisory committees, or their designees, to attend biannual regional workshops; providing a penalty; amending s. 553.791, F.S.; amending alternative plans and inspections; amending s. 723.011, F.S.; providing construction relating to rental agreements and tenancies; providing that a mobile home owner may be required to install permanent improvements as disclosed in the mobile home park prospectus; amending s. 723.012, F.S.; authorizing mobile home park owners to make certain prospectus amendments; providing requirements for the amendment; prohibiting certain costs and expenses from being passed on to existing mobile home owners; amending s. 723.023, F.S.; revising general obligations for mobile home owners; amending s. 723.031, F.S.; specifying a requirement for disclosing and agreeing to a mobile home lot rental increase; revising construction relating to a park owner's disclosure of certain taxes and assessments; amending s. 723.037, F.S.; authorizing mobile home park owners to give notice of lot rental increases for multiple anniversary dates in one

notice; providing construction; revising a requirement for a lot rental negotiation committee; amending s. 723.041, F.S.; providing that a mobile home park damaged or destroyed due to natural forces may be rebuilt with the same density as previously approved, permitted, and built; providing construction; amending s. 723.042, F.S.; conforming a provision to changes made by the act; amending s. 723.059, F.S.; authorizing certain mobile home purchasers to assume the remainder of a seller's prospectus; authorizing a mobile home park owner to offer a purchaser any approved prospectus; amending s. 723.061, F.S.; specifying entities that must be provided with a copy of an eviction notice when received by a mobile home owner; specifying the waiver and nonwaiver of certain rights of a mobile home park owner under certain circumstances; requiring the accounting at final hearing of rents received; amending s. 723.076, F.S.; revising procedures related to the election or appointment of new officers in a homeowner's association; amending s. 723.078, F.S.; revising requirements for board elections and ballots; requiring an impartial committee to be responsible for overseeing the election process and complying with ballot requirements; defining the term "impartial

committee"; requiring that association bylaws provide a method for determining the winner of an election under certain circumstances; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt procedural rules; revising the types of meetings that are not required to be open to members; providing an exception to a provision requiring an officer of an association to provide an affidavit affirming certain information; authorizing meeting notices to be provided by electronic means; providing that the minutes of certain board and committee meetings are privileged and confidential; conforming provisions to changes made by the act; amending s. 723.079, F.S.; revising homeowners' association recordkeeping requirements; revising the timeframes for which certain records are required to be retained and be made available for inspection or photocopying; capping the amount of damages for which an association is liable when a member is denied access to official records; requiring that certain disputes be submitted to mandatory binding arbitration with the division; amending s. 723.1255, F.S.; requiring that certain disputes be submitted to mandatory binding arbitration with the division; providing requirements for such arbitration and fees and costs; requiring the division

to adopt rules; reenacting s. 420.507(22)(i), F.S., relating to powers of the Florida Housing Finance Corporation, to incorporate the amendment made to s. 420.5087, F.S., in a reference thereto; reenacting s. 193.018(2), F.S., relating to land owned by a community land trust used to provide affordable housing, to incorporate the amendment made to s. 420.5095, F.S., in a reference thereto; providing an effective date

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7041 PCB CJS 20-01 Litigation Financing Consumer Protection
SPONSOR(S): Civil Justice Subcommittee, Leek
TIED BILLS: **IDEN./SIM. BILLS:** SB 1828

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	15 Y, 0 N	Mawn	Luczynski
1) Appropriations Committee	20 Y, 2 N	Jones	Pridgeon
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

Consumer litigation financing is a non-recourse transaction in which a third party ("litigation financier") provides funds to a consumer in exchange for an assignment of the consumer's contingent right to receive an amount of the potential proceeds of a civil action or claim. Unlike a traditional loan, where a lender might look at a consumer's credit score, income, and other indicators of the consumer's ability to pay, a litigation financier looks at the strength of the consumer's action or claim, the consumer's likelihood of prevailing, and the potential damages a consumer could obtain. A litigation financier also assesses the consumer's other debts, such as attorneys' fees or liens, which might take priority over the litigation financier's repayment.

Funds are paid directly to consumers and are used primarily for living expenses while the consumer waits for resolution of the civil action or claim that is the subject of the litigation financing contract ("subject claim"). Because the contract obligation can only be collected out of the subject claim's proceeds, if the consumer recovers nothing in the subject claim, he or she owes the litigation financier nothing, and there are no monthly payments required while the subject claim is pending. However, because interest and fees for a litigation financing contract can be extremely high, and litigation financing contract terms may be unclearly stated or require complicated calculations, some argue that consumers may end up owing much more than they might have anticipated at the contract's initiation, driving up litigation costs as they reject reasonable settlement offers on the chance of winning more in court. Some also argue that consumers may reject reasonable settlement offers at the direction of a litigation financier that hopes to ensure full payment of the contract obligation. Florida courts have held that litigation financing is not a loan subject to the state's existing consumer finance laws and caps on interest rates; thus, the product is unregulated in the state.

HB 7041 creates the Litigation Financing Consumer Protection Act ("Act"). Specifically, the bill:

- Requires a litigation financier to register with the Department of State and file a bond and allows revocation of a registration for non-compliance.
- Requires all litigation financing contracts to be in writing, be completely filled in, and contain mandatory terms (such as a right of rescission) and disclosures.
- Prohibits a litigation financier from engaging in specified conduct, including making settlement decisions.
- Sets a maximum interest rate of 30 percent simple interest and specifies how long interest can accrue.
- Caps fees and charges at $500 for any civil action or claim, regardless of the number of contracts a litigation financier enters into with the consumer with respect to that civil action or claim.
- Specifies the priority of a litigation financier's lien on the potential proceeds of a civil action or claim.
- Requires disclosure of litigation financing contracts to other parties in a civil action.
- Protects the work-product and attorney-client privileges despite communication with a litigation financier.
- Provides that a violation of the Act is a violation of the Florida Deceptive and Unfair Trade Practices Act.

The bill will have an indeterminate impact on state government. *See* Fiscal Analysis and Economic Impact Statement. The bill does not appear to impact local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Litigation Financing

Litigation financing is a non-recourse transaction[1] in which a third party ("litigation financier") provides funds to a person bringing a civil action or claim in exchange for an assignment of the person's contingent right to receive an amount of the civil action or claim's potential proceeds.[2] Litigation financing is available to both the commercial and consumer sectors.[3] In the commercial sector, the funds are provided to sophisticated litigants and used primarily for litigation costs in a commercial dispute.[4] However, in the consumer sector ("consumer litigation financing"), the funds are paid directly to individuals and used primarily for living expenses while the consumer waits for resolution of the civil action or claim that is the subject of the litigation financing contract ("subject action or claim").[5] Industry data suggests that more than half of such consumers have an annual family income of $50,000 or less and lack a college degree, while less than half are homeowners, suggesting that lower-income consumers with access to fewer resources are the primary market for litigation funding contracts.[6]

A consumer can apply for litigation financing any time before resolution of his or her civil action or claim.[7] Unlike a traditional loan, where a lender might look at a consumer's credit score, income, and other indicators of the consumer's ability to pay, a litigation financier looks at the strength of the consumer's civil action or claim, the consumer's likelihood of prevailing at trial or in settlement, and the potential damages a consumer could obtain.[8] A litigation financier also assesses the consumer's attorneys' fees and other debts, such as medical or child support liens,[9] which might take priority over the litigation financier's repayment.[10]

Benefits and Criticisms

Litigation financing proponents argue that the product provides a necessary funding source for consumers suffering an unexpected economic loss connected to a pending legal action or claim, giving consumers financial stability and helping them meet immediate personal needs, including rent, utilities, and groceries.[11] Proponents also point out that, because litigation financing is a non-recourse

---

[1] A non-recourse transaction is a financial transaction in which the borrower is not personally liable to the lender, so that the lender can only pursue the collateral to collect what the borrower owes. In other words, the lender does not have a lien on and cannot seize the borrower's assets to repay the debt. *See* United States Department of the Treasury, Internal Revenue Service, *Recourse vs. Nonrecourse Debt*, https://apps.irs.gov/app/vita/content/36/36_02_020.jsp (last visited Jan. 22, 2020).

[2] *See* Ronen Avraham and Anthony Sebok, *An Empirical Investigation of Third Party Consumer Litigation Funding*, 104 Cornell L. Rev. 1133 (2019), https://www.law.gwu.edu/sites/g/files/zaxdzs2351/f/downloads/Empirical-Investigation-Sebok.pdf (last visited Jan. 22, 2020).

[3] *Id.*

[4] *Id.*

[5] Paige Marta Skiba and Jean Xiao, *Consumer Litigation Funding: Just Another Form of Payday Lending?*, Law and Contemporary Problems Vol. 80 No. 117 (Nov. 3, 2017), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4840&context=lcp (last visited Jan. 22, 2020).

[6] Eric Schuller, President, Alliance for Responsible Consumer Legal Funding, *Consumer Legal Funding 101: Also Known As...Everything You Wanted To Know About Consumer Legal Funding But Were Afraid to Ask*, presented to the Florida House of Representatives Civil Justice Subcommittee, Dec. 12, 2019, https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2019121124 (last visited Jan. 22, 2020).

[7] *See* Skiba and Xiao, *supra* note 5.

[8] *Id.*; *see also* Schuller, *supra* note 6.

[9] A lien is a claim against property evidencing a debt, obligation, or duty. A lien can be created by judgment, equity, agreement, or statute. Fla. Jur. 2d Liens § 37:1.

[10] *See* Skiba and Xiao, *supra* note 5.

[11] The Alliance for Responsible Consumer Legal Funding (ARC), *More than A Trade Association*, http://arclegalfunding.org/ (last visited Jan. 22, 2020).

transaction, if the consumer loses the subject action or claim, he or she owes nothing under a litigation financing contract, making litigation financing less risky than a traditional loan.[12] Additionally, because the contract obligation is paid only out of the proceeds of a subject action or claim, there are no monthly or upfront payments required before the subject action or claim resolves.[13]

However, litigation financing opponents point out that in order to estimate the total amount owed under a litigation financing contract, including interest[14] and fees, a consumer must accurately predict the date of the subject action or claim's resolution and the amount of any settlement or judgment that will result in the consumer's favor.[15] Because contract terms may be unclearly stated or require complicated calculations, opponents argue that consumers may end up owing much more than they might have anticipated at the contract's initiation.[16] Additionally, the interest charged on a litigation financing contract, even if clearly stated, can be extremely high.[17] A consumer who realizes he or she may owe more than he or she may recover may drive up litigation costs by rejecting reasonable settlement offers for a chance to win a larger verdict in court.[18]

Further, uncertainty exists as to whether an attorney can discuss a litigation financing contract with a litigation financier without waiving the attorney-client[19] or work product[20] privileges. Such privileges are typically waived or limited when protected information is shared with a third party, but attorney-financier communication may be necessary for a litigation financier to evaluate a consumer's claim.[21] The American Bar Association urges attorneys discussing a litigation financing contract with a litigation financier to safeguard against waiving privilege, warning that infringing a client's rights requires the client's informed consent after full, candid disclosure of all associated risks and benefits.[22]

To address these issues, the Alliance for Responsible Consumer Funding ("ARC"), a national coalition of litigation financiers, requires its members to provide certain consumer protections in their litigation financing contracts.[23] These protections include clearly-defined contract terms, which a consumer's attorney must review, and no hidden fees or complicated calculations.[24] However, ARC membership is not mandatory for litigation financiers, leaving each state the responsibility for regulating litigation financing within its borders. To that end, ARC advocates for state regulation creating litigation financing consumer protections while preserving a consumer's access to litigation financing.[25]

---

[12] *See* Schuller, *supra* note 6; *see also* ARC, *What is Consumer Legal Funding?*, http://arclegalfunding.org/consumer-legal-funding/ (last visited Jan. 22, 2020).
[13] *See* Schuller, *supra* note 6; *see also* ARC, *What is Consumer Legal Funding?*, http://arclegalfunding.org/consumer-legal-funding/ (last visited Jan. 22, 2020).
[14] Interest is the cost of borrowing money, expressed as a percentage of the borrowed amount. *See* Anya Martin, *The Interest Rate v. the Annual Percentage Rate*, The Wall Street Journal, May 21, 2015, https://www.wsj.com/articles/the-interest-rate-vs-the-annual-percentage-rate-1432215724 (last visited Jan. 22, 2020).
[15] *See* Skiba and Xiao, *supra* note 5.
[16] *Id.*
[17] A plaintiff suing a litigation financing company for violating Florida's usury laws, alleging that his litigation financing contract charged interest at a rate of 3.5 percent compounded monthly, which, if the subject civil action or claim did not quickly resolve, could result in an effective 51 percent interest rate. *See Taylor v. Certified Legal Funding, Inc.*, No. 8:18CV00027, (M.D. Fla. 2018).
[18] *See* Skiba and Xiao, *supra* note 5.
[19] Under the attorney-client privilege, communication between an attorney and his or her client is typically confidential if such persons do not intend to disclose it to a third party. This protects the giving of information to an attorney so that the attorney can give sound and informed legal advice. S. 9.502(1)(c), F.S.; *Upjohn Co. v. United States*, 101 S.Ct. 677 (1981).
[20] Work product means "documents and other tangible things...prepared in anticipation of litigation or for trial." Work product is almost absolutely protected under Florida common law if it contains mental impressions, conclusions, opinions and legal theories about litigation. Fla. R. Civ. P. 1.280(b)(3); *State v. Rabin*, 495 So. 2d 257(Fla. 3d DCA 1986).
[21] *See* ARC, *supra* note 11.
[22] American Bar Association, Commission on Ethics 20/20, *Informational Report to the House of Delegates*, https://www.law.columbia.edu/sites/default/files/microsites/clwa/CIAA/keynote_third_party_funding.pdf (last visited Jan. 22, 2020).
[23] *See* Schuller, *supra* note 6; *see also* ARC, *What is Consumer Legal Funding?*, http://arclegalfunding.org/consumer-legal-funding/ (last visited Jan. 22, 2020).
[24] *See* ARC, *What is Consumer Legal Funding?*, http://arclegalfunding.org/consumer-legal-funding/ (last visited Jan. 22, 2020).
[25] *Id.*

Litigation Financing - Florida

Florida regulates consumer loans and financing, usury,[26] and interest.[27] However, Florida courts have specifically found that litigation financing is not a loan subject to existing law, leaving litigation financing and associated interest charges unregulated in the state.[28] Given the lack of regulation, the Florida Bar[29] generally "discourages the use of [litigation financing] companies," allowing an attorney to inform a client about litigation financing only if the attorney feels it is in the client's best interests.[30]

Litigation Financing Regulation - Other States

Since 2007, 11 states have passed legislation regulating litigation financing. Of these, most require a litigation financier to register with the state prior to engaging in litigation financing and cap the interest or fees chargeable on a litigation financing contract. Two states require litigation financing contract disclosure in civil actions or claims, and four protect privileged communications.

State (Statute)	Year Passed	Registration Required	Interest Caps	Fee Caps	Disclosure Required	Privilege Protected
Arkansas (§ 4-57-109)	2015		X			
Indiana (§ 24-12)	**2016**	**X**	**X**	**X**		**X**
Maine (§ 9A-12)	2007	X				
Nebraska (§§ 25-3301 to 3309)	**2010**	**X**		**X**		**X**
Nevada (§ 604C)	2019	X	X	X		
Ohio (§ 1349.55)	**2008**					**X**
Oklahoma (§§ 14A-3-801 to 817)	2013	X				
Tennessee (§ 47-16)	**2014**	**X**	**X**	**X**		
Vermont (§74-2251 to 2260)	2016	X				X
West Virginia (§ 46A-6N)	**2019**	**X**	**X**	**X**	**X**	
Wisconsin (§801.01(2)(bg))	2018				X	

New York and South Carolina took a different approach, regulating litigation financing through administrative action. Specifically, New York's Attorney General requires litigation financing contracts to provide certain consumer protections,[31] while South Carolina's Department of Consumer Affairs declared the product a loan subject to the state's consumer protection code.[32] Courts in Colorado, Kentucky, and North Carolina have also deemed litigation financing a loan subject to state usury laws.[33] Uniquely, Pennsylvania courts have invalidated litigation financing contracts under a common law

[26] "Usury" means loaning money at an exorbitant or illegally high interest rate. States set their own maximum interest rates. Florida declares interest higher than 18 percent per year for loans up to $500,000 and higher than 25 percent for loans over $500,000 usurious unless otherwise allowed by law. Legal Information Institute, *Usury*, https://www.law.cornell.edu/wex/usury (last visited Jan. 22, 2020); Ss. 687.02(1) and 687.071(2) and (3), F.S.

[27] See generally chs. 516 and 687, F.S.

[28] *Fausone v. U.S. Claims, Inc.*, 915 So. 2d 626 (Fla. 2nd DCA 2005); *see also Taylor*, No. 8:18CV00027.

[29] Article V, s. 15 of the Florida Constitution gives the Florida Supreme Court exclusive and ultimate regulatory authority over persons admitted to practice law in Florida. The Court performs this function through the Florida Bar, an investigative and prosecutorial authority charged with ensuring that all attorneys meet the minimum standards of conduct set out in the Rules Regulating the Florida Bar.

[30] 00-3 Fla. Ethics Op. Fla. Bar (Mar. 15, 2002), https://www.floridabar.org/etopinions/etopinion-00-3/ (last visited Jan. 22, 2020).

[31] *See* Julia H. McLaughlin, *Litigation Funding: Charting a Legal and Ethical Course*, 31 Vt. L. Rev. 615 (2007), https://lawreview.vermontlaw.edu/wp-content/uploads/2012/02/mclaughlin.pdf (last visited Jan. 22, 2020).

[32] U.S. Chamber Institute for Legal Reform, *Lawsuit Lending: South Carolina Calls it Like It Is*, https://www.instituteforlegalreform.com/resource/lawsuit-lending-south-carolina-calls-it-like-it-is (last visited Jan. 22, 2020).

[33] *Oasis Legal Fin. Grp., LLC v. Coffman*, 361 P. 3d 400 (Co. S.Ct. 2015); *Boling v. Prospect Funding Holdings, LLC*, 2017 WL 1193064, (W.D. Ky. 2017); *Odell v. Legal Bucks, LLC*, 192 N.C.App. 298 (N.C. Ct. of Appeals 2008).

champerty doctrine,[34] and Alabama courts have held that litigation financing contracts are a form of gambling, or speculating, in litigation and thus void as against public policy.[35]

Effect of Proposed Changes

The bill creates the Litigation Financing Consumer Protection Act, regulating litigation financing to protect Florida consumers.

The bill defines litigation financing as a non-recourse transaction in which a litigation financier gives a consumer funds in exchange for an assignment of the consumer's contingent right to receive an amount of a civil action or claim's potential proceeds.[36] This term specifically excludes, and thus the bill does not apply to:

- Legal services provided by an attorney on a contingency fee[37] basis;
- A commercial tort claim;[38]
- A Workers' Compensation claim;[39]
- Lending or financial arrangements between an attorney or law firm and a lending institution to fund litigation costs in the ordinary course of business; and
- A consumer finance loan.[40]

Florida regulates these excluded products, practices, and claims under other existing laws and rules.

Registration and Revocation

The bill requires a litigation financier to register as a litigation financier with the Department of State ("Department") before offering litigation financing and to file with the Department a $250,000 bond:

- Issued by a surety company authorized to do business in the state;
- Payable to the Department for the payment of damages awarded to a consumer in an action under the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"); and
- Effective so long as the Department's records designate a litigation financier as such or a litigation financing contract with the litigation financier is effective.

Corporate, Limited Liability Company, and Partnership Registration

Florida law already requires a corporation, limited liability company ("LLC"), or partnership to register with the Department by filing an organizational document[41] or certificate of authority application[42] and meeting other requirements. The bill supplements existing registration requirements for such

---

[34] The champerty doctrine prohibits selling legal judgment or settlement proceeds before such judgement or settlement to a disinterested party. *See* Paul Bond, *Making Champerty Work: An Invitation to State Action*, 150 U. Penn. L. Rev. 1297 (2002), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3271&context=penn_law_review (last visited Jan. 22, 2020); *WFIC, LLC v. LaBarre, 2016 WL 4769436 (Pa. 1st J.D. 2016).*

[35] *Wilson v. Harris*, 688 So. 2d 265 (Ala. Civ. App. 1996).

[36] The bill expressly provides that a consumer may assign his or her contingent right to receive an amount of the potential proceeds of a civil action or claim.

[37] In certain lawsuits, such as a personal injury lawsuit, an attorney may agree to accept a portion of the money a client recovers from his or her civil action or claim as the fee for the attorney's service. Such agreements must be in writing and entered into at the outset of the representation. See The Florida Bar, Consumer Pamphlet: Attorney's Fees, https://www.floridabar.org/public/consumer/pamphlet003/ (last visited Jan. 22, 2020).

[38] A "commercial tort claim" is a claim arising in tort with respect to which the claimant is an organization or the claimant is an individual and the claim arose in the course of the claimant's business or profession and does not include damages arising out of personal injury to or the death of an individual. S. 679.1021(1)(m), F.S.

[39] A "workers' compensation claim" is a claim for disability and medical benefits made by an injured worker. Such benefits are paid at the employer's expense. See Ch. 440, F.S.

[40] A "consumer finance loan" is a loan of money, credit, or goods in an mount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum. S. 516.01(2), F.S.

[41] Organizational documents include articles of organization or incorporation and a certificate of limited partnership.

[42] A certificate of authority allows a foreign corporation or limited liability company to do business in the state.

businesses wishing to engage in litigation financing by providing that a corporation, LLC, or partnership is registered as a litigation financier if it:

- Meets the bond requirements;
- Has a status of active and in good standing in Department records; and
- Indicated in its organizational document, or certificate of authority application, that it is a litigation financier.

A litigation financier that is a corporation, LLC, or partnership must amend its registration within 30 days after the information contained in the registration changes or becomes inaccurate by updating its organizational document or certificate of authority application in the manner already prescribed by the Department for updating such documents.

Sole Proprietorship Registration

Florida law does not require sole proprietorships to register with the Department, and thus the bill creates a unique registration process for sole proprietorships wishing to engage in litigation financing. Under the bill, a sole proprietorship is registered as a litigation financier in the state if it:

- Meets the bond requirements; and
- Files a litigation financier registration application with the Department containing:
    - The applicant's full legal name and fictitious name, if any;
    - The applicant's physical and mailing addresses and telephone number;
    - A statement that the applicant is a litigation financier; and
    - Any other information the Department requires.

A litigation financier that is a sole proprietorship must amend its registration within 30 days after the information contained in the registration changes or becomes inaccurate by filing an amendment on a form prescribed by the Department.

Registration Revocation

The bill gives the Department the authority to revoke a litigation financier's registration for non-compliance with the registration, registration amendment, and bond requirements. Specifically, if the Department determines that a litigation financier violated any of these requirements, the Department must serve the litigation financier notice of its intent to revoke the litigation financier's registration. Such notice must specifically list all revocation grounds and may be sent by electronic mail if the litigation financier gave the Department an electronic mail address. A litigation financier has 60 days from the date the Department sends such notice to correct each revocation ground or to show there were no such violations. Otherwise, the Department must revoke the litigation financier's registration, after which the litigation financier may not continue to offer litigation financing in the state.

Contract Terms and Disclosures

The bill requires that all litigation financing contracts be in writing and completely filled in when offered or presented to a consumer. The bill also provides mandatory contract terms and disclosures designed to inform consumers of their financial obligations under the contract.

Mandatory Terms

The bill requires that a litigation financing contract contain a right of rescission allowing the consumer to cancel the contract without penalty if the consumer gives written rescission notice and returns any funds already provided under the contract to the litigation financier within five business days after contract execution or receipt of the funds. This prevents a litigation financier from assessing interest, fees, or charges to a consumer who timely and correctly cancels a litigation financing contract.

The bill also requires that a litigation financing contract include:

- The consumer's written acknowledgement of whether he or she has an attorney; and
- A statement indicating that, if the subject action or claim's proceeds are paid into a settlement fund or trust, the litigation financier must notify the fund or trust administrator of any outstanding financial obligations under the contract.

Mandatory Disclosures

The bill requires that a litigation financing contract disclose that a litigation financier may not, and will not, make any decisions about the subject action or claim or try to influence its direction. Further, the PCB requires a litigation financing contract to contain specifically worded disclosures pertaining to a consumer's contract rescission rights and warning that a consumer should not sign the contract without completely reading it or if any part of the contract is incomplete or blank.

The bill also requires a litigation financing contract to include notice that, if the net proceeds[43] of the subject action or claim are insufficient to fully repay the litigation financier, the litigation financier will accept a reduced sum as full payment of what is owed under the contract, which sum cannot exceed the net proceeds less proceeds specifically awarded for medical expenses. If the consumer recovers nothing in the subject action claim, the consumer owes the litigation financier nothing.

Additionally, the bill requires a litigation financing contract to specifically state:

- The total funded amount;
- An itemized list of all fees and charges;
- The interest rate; and
- The total amount the consumer owes in six-month intervals for three years.

Prohibited Conduct

The bill prohibits a litigation financier from engaging in conduct harmful to consumers. Specifically, the bill prohibits a litigation financier from:

- Paying, offering to pay, or accepting a commission, referral fee or other consideration.
- Advertising false or misleading information about its products or services.
- Referring a consumer to a specific attorney or health care practitioner.[44]
- Failing to promptly give a consumer a copy of any complete litigation financing contract.
- Trying to obtain a waiver of a consumer's remedy in the subject action or claim.
- Trying to effect arbitration or waiver of a consumer's jury trial right in the subject action or claim.
- Offering or giving a consumer legal advice about the litigation financing contract or the subject action or claim.
- Assigning a litigation financing contract in whole or in part.
- Reporting to a consumer credit agency if there are not enough funds left from the net proceeds of the subject action or claim to repay the litigation financier.
- Directing, or making, any decisions about, the subject action or claim.
- Entering into a litigation financing contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing contract.
- Knowingly entering into a litigation financing contract with a consumer who already has a contract with another litigation financier without first paying off the amount owed under that contract, unless the consumer consents to multiple contracts in writing.

[43] "Net proceeds" means the portion of the proceeds of a civil action or claim remaining after satisfaction of all liens with a higher priority than that of the litigation financier as specified in s. 501.1006(2), F.S.
[44] "Health care practitioner" has the same meaning as in s. 456.001(4), F.S.

Interest, Fees, Charges, and Penalties

The bill limits the amount and duration of interest, fees, charges, and penalties a litigation financier may assess a consumer, preventing exorbitant assessments and enabling a consumer to determine at the time of contract execution the maximum amount owed under the contract.

Interest

The bill prohibits a litigation financier from assessing an interest[45] rate greater than 30 percent of the funded amount[46] and requires that, in determining this rate, the computations used are simple interest.[47] Interest can only accrue on the funded amount, not on any fees, charges, or interest assessed.

The bill also specifies that interest only accrues until a court enters a final order or a settlement agreement is executed in the subject action or claim, whichever is earlier, but provides that in no case can interest accrue for more than three years from the date the consumer receives the funds. Further, the bill prohibits a litigation financier from assessing interest on a rescinded contract. This means that a consumer will not pay more than three years' worth of interest on the funded amount regardless of how long the subject action or claim's resolution takes, and will owe no interest if he or she properly rescinds the contract.

Fees, Charges, and Penalties

The bill caps fees a litigation financier may charge at $500 with regard to any civil action or claim. This means that if a consumer enters into multiple litigation financing contracts with a litigation financier in exchange for assigning to the litigation financier his or her contingent right to proceeds from a single action or claim, the consumer will not owe more than $500 in charges and fees. Additionally, the bill prohibits a litigation financier from assessing any fee, charge, or penalty for contract rescission, so that a consumer properly rescinding the contract will owe nothing.

Lien Priority

A litigation financier's lien on the potential proceeds of a civil action or claim has priority over liens that attach to such proceeds subsequent to the attachment of the litigation financier's lien, except for:

- Attorney, insurance carrier, or healthcare practitioner liens or liens based upon subrogation interests or reimbursement rights related to the subject civil action or claim; and
- Child support, Medicare, tax, or any other statutory or governmental lien.

Privilege and Discovery

Privilege

The bill specifies that communication between an attorney and a litigation financier about a litigation financing contract does not limit, waive, or abrogate any statutory or common-law privilege, including the attorney-client privilege and the work product doctrine. This means that an attorney may discuss a litigation financing contract with a litigation financier within the bounds of any applicable Florida Bar rules without waiving these privileges.

---

[45] "Interest" means the cost of obtaining litigation financing and includes any profit or advantage of any kind whatsoever that a litigation financier may charge, contract for, collect, receive, or in any way obtain as a condition for a litigation financing contract. Charges and fees specifically authorized by the Act are not interest.

[46] The "funded amount" means the funds actually received and retained by a consumer under a litigation financing contract.

[47] "Simple interest" is interest paid on the amount lent, at a certain rate, which does not become part of the base on which future interest is calculated. Black's Law Dictionary 561 (6th ed. 1991).

Discovery

The bill requires a party to a civil action or claim to provide the other parties any litigation financing contract relating to such action or claim without waiting for a discovery request, except as otherwise ordered by the court. This gives a defendant notice of a plaintiff's obligation to a litigation financier.

Violations and Enforcement Under FDUTPA

The bill specifies that a violation of the Act is actionable under FDUTPA.[48] Such violations occurring in or affecting a single judicial circuit are enforced by the office of the state attorney ("OSA") for the affected circuit, or the Department of Legal Affairs ("DLA") if the state attorney defers to DLA in writing or fails to act within 90 days after a written complaint is filed.[49] DLA also enforces violations occurring in or affecting more than one judicial circuit.[50]

Enforcement Actions

The FDUTPA enforcing authority has numerous enforcement remedies, which may be brought after the enforcement authority reviews the matter and determines that such an action serves the public interest.[51] These remedies include bringing an action:

- For a declaratory judgment stating that an act or practice violates FDUTPA.[52]
- To enjoin a litigation financier violating FDUTPA.[53]
- On behalf of a consumer or governmental entity for the actual damages caused by an act or practice violating FDUTPA.[54]

Any litigation financier who willfully[55] uses a deceptive or unfair trade act or practice faces a civil penalty of up to $10,000 per violation, and a civil penalty of up to $15,000 per violation if the victim was a senior citizen,[56] disabled person,[57] or military service member.[58] Further, the litigation financier could be ordered to pay the enforcing authority's attorneys' fees and costs if the enforcing authority prevails.[59]

Cease and Desist Orders

If DLA believes a litigation financier is violating FDUTPA, and that a cease and desist order ("order") would serve the public interest, DLA must serve the litigation financier with a complaint and order stating its charges.[60] Such complaint must contain a notice setting a hearing for a date and time at least 30 days after service, which hearing must comply with the Administrative Procedures Act.[61] An order, appealable to the circuit court of appeals, takes effect ten days after all administrative action concludes or, if appealed, when the appellate court enters a final order in favor of DLA.[62] A litigation financier violating such an order faces a civil penalty of up to $5,000 per violation.[63]

---

[48] FDUTPA is set forth in ch. 501, F.S., part II.
[49] S. 501.203(2), F.S.
[50] *Id.*
[51] S. 501.207(2), F.S.
[52] S. 501.207(1)(a), F.S.
[53] S. 501.207(1)(b), F.S.
[54] S. 501.207(1)(c), F.S.
[55] A willful violation occurs when a person knew or should have known his or her conduct was unfair or deceptive and prohibited. S. 501.2075, F.S.
[56] As used here, "senior citizen" means a person 60 years of age or older. S. 501.2077(1)(e), F.S.
[57] As used here, "disabled person" means a person who has a mental or educational impairment that substantially limits one or more major life activities. S. 501.2077(1)(d), F.S.
[58] Ss. 501.2075 and s. 501.2077(2) and (3), F.S.
[59] S. 501.2105, F.S.
[60] S. 501.208(1), F.S.
[61] *Id.*
[62] S. 501.208(4), F.S.
[63] S. 501.208(7), F.S.

Declaratory Judgment Actions

A consumer harmed by a litigation financier's FDUTPA violation may bring an action for a declaratory judgment that a litigation financier's act or practice violates FDUTPA and to enjoin the litigation financier from committing such an act or practice.[64] A consumer bringing a declaratory judgment action may recover his or her actual damages, plus attorneys' fees and costs, from the litigation financier, and damages may be paid from the bond held by the Department.[65]

B. SECTION DIRECTORY:

Section 1: Provides that this Act may be cited as the Litigation Financing Consumer Protection Act.
Section 2: Creates s. 501.1001, F.S., relating to definitions.
Section 3: Creates s. 501.1002, F.S., relating to litigation financier registration; registration revocation.
Section 4: Creates s. 501.1003, F.S., relating to litigation financing contracts; terms.
Section 5: Creates s. 501.1004, F.S., relating to prohibited conduct.
Section 6: Creates s. 501.1005, F.S., relating to required disclosures.
Section 7: Creates s. 501.1006, F.S., relating to contingent right to proceeds assignable; priority of lien or right to proceeds.
Section 8: Creates s. 501.1007, F.S., relating to interest, fees, charges, and penalties.
Section 9: Creates s. 501.1008, F.S., relating to litigation financing contracts; discovery.
Section 10: Creates s. 501.1009, F.S., relating to effect of communication on privilege.
Section 11: Creates s. 501.1010, F.S., relating to violation; enforcement.
Section 12: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The state may collect a civil penalty from a litigation financier that has violated FDUTPA. A litigation financier who willfully uses a deceptive or unfair trade act or practice may face a civil penalty of up to $10,000 per violation, or $15,000 per violation if such victim was a senior citizen, disabled person, or military service member.

2. Expenditures:

   The bill may have an indeterminate negative impact on the Department, as it requires the Department to process a new type of registration, revoke such registration for specified violations after notice and opportunity to cure, and to hold bonds. However, these costs could possibly be absorbed in the Department's operating budget as the Department currently serves a similar registration function for corporations, limited liability companies, and partnerships.

   Additionally, because the bill creates a FDUTPA violation, the bill may cause an indeterminate, but likely insignificant, workload increase on the DLA and the OSA for each judicial circuit, as both are currently charged with prosecuting such violations. However, these costs may be absorbed in such entities' respective operating budgets.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[64] S. 501.211(1), F.S.
[65] S. 501.211(2), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may positively impact a consumer entering a litigation financing contract by capping allowable interest, fees, and charges to the consumer, and providing greater transparency regarding the total amount due from the consumer when he or she enters the contract.

The bill may negatively impact litigation financiers who will be subject to additional requirements and prohibitions under the bill, including state registration requirements and maximum allowable interest, fees, and charges to consumers. A litigation financier who willfully uses a deceptive or unfair trade act or practice may face a civil penalty of up to $10,000 per violation, or $15,000 per violation if the victim was a senior citizen, disabled person, or military service member.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill gives the Department the authority to promulgate rules necessary to implement the bill's registration, bond, and revocation requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 22, 2020, the Civil Justice Subcommittee adopted one amendment and reported the PCB favorably as amended. The amendment changed the definition of "consumer" from a "natural person" located in the state to an "individual" without regard to location.

This analysis is drafted to the PCB as amended by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to litigation financing consumer protection; creating part VIII of ch. 501, F.S., entitled "Litigation Financing Consumer Protection Act"; creating s. 501.1001, F.S.; providing definitions; creating s. 501.1002, F.S.; requiring litigation financiers to register with the Department of State before engaging in litigation financing; providing registration requirements; requiring litigation financiers to file a surety bond meeting specified requirements; requiring the department serve notice to such financiers and to revoke such registrations for certain noncompliance; authorizing the department to adopt rules; creating s. 501.1003, F.S.; providing requirements for litigation financing contracts; creating s. 501.1004, F.S.; prohibiting litigation financiers from engaging in specified conduct; creating s. 501.1005, F.S.; providing disclosure requirements for litigation financing contracts; creating s. 501.1006, F.S.; providing for the assignment of contingent rights to civil action or claim proceeds; specifying the priority of liens against or rights to civil action or claim proceeds; creating s. 501.1007, F.S.; authorizing litigation financiers to assess specified interest, fees, and

charges; providing requirements for such interest, fees, and charges; prohibiting a litigation financier from assessing specified fees or charges; creating s. 501.1008, F.S.; requiring the disclosure of litigation financing contracts under specified circumstances; creating s. 501.1009, F.S.; providing that specified communications between attorneys and litigation financiers do not effect statutory or common-law privilege; creating s. 501.1011, F.S.; providing that violations of the act are deceptive and unfair trade practices; providing construction; providing an effective date.

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

Section 1. Part VIII of chapter 501, Florida Statutes, consisting of sections 501.1001, 501.1002, 501.1003, 501.1004, 501.1005, 501.1006, 501.1007, 501.1008, 501.1009, and 501.1011, is created and entitled "Litigation Financing Consumer Protection Act."

Section 2. Section 501.1001, Florida Statutes, is created to read:

501.1001 Definitions.—As used in this part, the term:

(1) "Consumer" means any individual.

(2) "Department" means the Department of State.

(3) "Enforcing authority" has the same meaning as in s. 501.203.

(4) "Funded amount" means the funds actually received and retained by a consumer under a litigation financing contract.

(5) "Health care practitioner" has the same meaning as in s. 456.001(4).

(6) "Interest" means the cost of obtaining litigation financing and includes any profit or advantage of any kind whatsoever that a litigation financier may charge, contract for, collect, receive, or in any way obtain as a condition for a litigation financing contract. Charges and fees specifically authorized by this part are not interest.

(7) "Litigation financier" means a person engaged in the business of litigation financing.

(8) "Litigation financing" means a nonrecourse transaction in which a litigation financier provides funds to a consumer in exchange for an assignment of the consumer's contingent right to receive an amount of the potential proceeds of the consumer's civil action or claim. The term does not include:

(a) Legal services provided to a consumer on a contingency fee basis, or advanced legal costs, where such services or costs are provided by an attorney representing the consumer in accordance with the Florida Rules of Professional Conduct;

(b) A commercial tort claim as defined in s. 679.1021(1)(m);

(c) A worker's compensation claim under chapter 440;

(d) Lending or financing arrangements between an attorney or law firm and a lending institution to fund litigation costs in the ordinary course of business; or

(e) A consumer finance loan, as defined in s. 516.01(2).

(9) "Net proceeds" means the portion of the proceeds of a civil action or claim remaining after satisfaction of all liens with a higher priority than that of the litigation financier as specified in s. 501.1006(2).

Section 3. Section 501.1002, Florida Statutes, is created to read:

501.1002 Litigation financier registration; registration revocation.—

(1) A litigation financier may not engage in litigation financing in this state before registering as a litigation financier under this section.

(a) A litigation financier that is a corporation, limited liability company, or partnership is registered under this section if it has:

1. Met the bond requirements of subsection (2);

2. A status of active and in good standing as reflected in department records; and

3. Filed articles of organization or incorporation, a certificate of limited partnership, or another organizational document, or, if a foreign entity, an application for a

certificate of authority with the department stating therein that it is a litigation financier.

(b) A litigation financier who is not a corporation, limited liability company, or partnership is registered under this section if he or she has:

1. Met the bond requirements of subsection (2); and

2. Filed a litigation financier registration application with the department on a form prescribed by the department containing, at a minimum:

a. The applicant's full legal name and fictitious name, if any;

b. The applicant's physical address, mailing address, and telephone number;

c. A statement that the applicant is a litigation financier; and

d. Any other information the department deems necessary.

(2) Each litigation financier must file with the department a $250,000 surety bond, which bond must be:

(a) Issued by a surety company authorized to do business in this state.

(b) Payable to the department for the payment of damages awarded to a consumer under part II of this chapter.

(c) Effective so long as the department's records designate a litigation financier as such or a litigation financing contract with the litigation financier is effective.

(3) A litigation financier must amend its registration within 30 days after the date the information contained therein changes or becomes inaccurate in any respect. A litigation financier who is not a corporation, limited liability company, or partnership may amend his or her registration by filing with the department an amendment on a form prescribed by the department.

(4) If the department determines that a litigation financier has not complied with the requirements of this section, the department shall serve the litigation financier notice in a record of its intent to revoke the litigation financier's registration. Such notice:

(a) Must specifically state all grounds for revocation; and

(b) May be sent by electronic mail to a litigation financier that provided the department with an electronic mail address.

(5) A litigation financier has 60 days from the date the department sends the notice required by subsection (4) to correct the grounds for revocation or demonstrate to the reasonable satisfaction of the department that each ground determined by the department does not exist. The department shall revoke the litigation financier registration of any litigation financier who fails to comply with the requirements of this section.

(6) The department has the authority reasonably necessary to enable it to administer this section efficiently, to perform duties imposed upon it, and to adopt rules to implement this section.

Section 4. Section 501.1003, Florida Statutes, is created to read:

501.1003 Litigation financing contracts; terms.—The litigation financing terms must be set forth in a written contract containing:

(1) A right of rescission allowing the consumer to cancel the contract without penalty, interest, fees, or charges, or further obligation if, within 5 business days after execution of a contract or receipt of funds by the consumer, whichever is later, the consumer provides written rescission notice and returns any funds already provided under the contract to the litigation financier;

(2) The consumer's written acknowledgement of whether an attorney represents him or her in the civil action or claim that is the subject of the contract; and

(3) A statement indicating that, in the event the proceeds of the subject civil action or claim are paid into a settlement fund or trust, the litigation financier must notify the fund or trust administrator of any outstanding financial obligations arising from the contract.

Section 5. Section 501.1004, Florida Statutes, is created

to read:

501.1004 Prohibited conduct.—A litigation financier may not:

(1) Pay or offer to pay a commission, referral fee or other consideration to any person, including an attorney, law firm, or health care practitioner, for referring a consumer to a litigation financier;

(2) Accept a commission, referral fee, rebate, or other consideration from any person, including an attorney, law firm, or health care practitioner;

(3) Advertise false or misleading information about its products or services;

(4) Refer a consumer to a specific attorney, law firm, or health care practitioner, except that, if a consumer lacks legal representation, the litigation financier may refer the consumer to an attorney referral service operated by a county or state bar association;

(5) Fail to promptly supply a copy of any complete litigation financing contract to the consumer;

(6) Attempt to obtain a waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages, that the consumer might otherwise have in the subject civil action or claim;

(7) Attempt to effect arbitration or waiver of a consumer's right to a jury trial in the subject civil action or

claim;

(8) Offer or provide legal advice to the consumer regarding the litigation financing contract or the subject civil action or claim;

(9) Assign a litigation financing contract in whole or in part;

(10) Report to a consumer credit reporting agency if insufficient funds remain from the net proceeds of the subject civil action or claim to repay the litigation financier;

(11) Direct, or make any decisions with respect to, the course of the subject civil action or claim or any settlement thereof;

(12) Enter into a litigation financing contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing litigation financing contract; or

(13) Knowingly enter into a litigation financing contract with a consumer already under a litigation financing contract with another litigation financier without first paying the entire funded amount and all fees and charges owed under the existing contract, unless the consumer consents to a contemporaneous financing arrangement in writing.

Section 6. Section 501.1005, Florida Statutes, is created to read:

501.1005 Required disclosures.—

(1) A litigation financing contract must contain the following disclosures on the front page of the contract in at least 12-point boldfaced type:

(a) Notice of the consumer's right to a completely filled in contract;

(b) A statement that the litigation financier does not have the right to, and may not make any decisions or attempt to, influence the consumer or his or her attorney about the conduct of the civil action or claim that is the subject of the contract and that the right to make such decisions remains solely with the consumer;

(c) The total funded amount provided to the consumer;

(d) An itemized list of all fees and charges payable by the consumer;

(e) The interest rate;

(f) The total amount due from the consumer in 6-month intervals for 3 years, including all interest, fees, and charges;

(g) A statement that the consumer will owe no fees or charges other than those described in the disclosures;

(h) The cumulative amount due from the consumer for all litigation financing contracts if the consumer seeks multiple contracts and makes repayment any time after contract execution;

(i) Notice that if the consumer recovers nothing from the subject civil action or claim, he or she will owe the litigation

financier nothing; and

(j) Notice that if the net proceeds of the subject civil action or claim are insufficient to fully repay the litigation financier, the litigation financier will accept a reduced sum as full payment of the funded amount and all fees and charges owed, which sum may not exceed the net proceeds less proceeds specifically awarded for future medical expenses.

(2) A litigation financing contract must also contain the following disclosure on the front page of the contract in at least 18-point uppercase and boldfaced type:

CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY, INTEREST, FEES, CHARGES, OR FURTHER OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR RECEIPT OF FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.

(3) A litigation financing contract must contain the following disclosure immediately above the consumer's signature line in 18-point uppercase and boldfaced type:

DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY. YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN ACCOUNTANT.

Section 7. Section 501.1006, Florida Statutes, is created to read:

501.1006 Contingent right to proceeds assignable; priority of lien or right to proceeds.—

(1) A consumer may assign his or her contingent right to receive an amount of the potential proceeds of a civil action or claim.

(2) A litigation financier's lien on the potential proceeds of a civil action or claim has priority over liens that attach to such proceeds subsequent to the attachment of the litigation financier's lien, except for:

(a) Attorney, insurance carrier, or healthcare practitioner liens or liens based upon subrogation interests or reimbursement rights related to the subject civil action or claim; and

(b) Child support, Medicare, tax, or any other statutory or governmental lien.

Section 8. Section 501.1007, Florida Statutes, is created to read:

501.1007 Interest, fees, charges, and penalties.—

(1) A litigation financier may not directly or indirectly charge, contract for, or receive an interest rate of greater than 30 percent of the funded amount per annum. In determining compliance with the statutory maximum interest rate, the computations used must be simple interest and not add-on interest or any other computations.

(2) The maximum interest rate that may be contracted for and received by a litigation financier is 12 times the maximum monthly rate, and the maximum monthly rate must be computed on the basis of one-twelfth of the annual rate for each full month. The maximum daily rate must be computed on the basis of the maximum monthly rate divided by the number of days in the month.

(3) Interest may only accrue until a court enters a final order or a settlement agreement is executed in the civil action or claim that is the subject of the litigation financing contract, whichever is earlier, but interest may not accrue for a period exceeding three years from the date the consumer receives the funds from the litigation financier. The total interest assessed must be calculated based on the actual number of days for which interest accrued.

(4) A litigation financier may not directly or indirectly charge, contract for, or receive any fees or charges the combined total of which exceeds $500 with regard to a single civil action or claim, regardless of the number of litigation

financing contracts the consumer enters into with the litigation financier with respect to the civil action or claim.

(5) A litigation financier may not directly or indirectly charge, contract for, or receive any interest, fees, or charges, for rescission or cancellation of a litigation financing contract under s. 501.1003(1).

Section 9. Section 501.1008, Florida Statutes, is created to read:

501.1008 Litigation financing contracts; discovery.—Except as otherwise ordered by the court, a party to any civil action or claim must, without awaiting a discovery request, provide to the other parties any contract under which a litigation financier has a contingent right to receive compensation sourced from potential proceeds of the civil action or claim.

Section 10. Section 501.1009, Florida Statutes, is created to read:

501.1009 Effect of communication on privilege.—Communication between a consumer's attorney and a litigation financier regarding a litigation financing contract does not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

Section 11. Section 501.1011, Florida Statutes, is created to read:

501.1011 Violation; enforcement.—

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(1) A violation of this part is an unfair and deceptive trade practice actionable under part II of this chapter.

(2) This section does not limit the:

(a) Enforcing authority's exercise of powers or performance of duties which the enforcing authority is otherwise legally authorized or required to exercise or perform; or

(b) Rights and remedies available to the state or a person under any other law.

Section 12. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

HB 7041 by Rep. Leek
Litigation Financing Consumer Protection

AMENDMENT SUMMARY
February 27, 2020

Amendment 1 by Rep. Leek (line 41): The amendment moves the Litigation Financing Consumer Protection Act from ch. 501, F.S., to ch. 559, F.S., and makes conforming changes.

Amendment 2 by Rep. Leek (line 66): The amendment limits the application of the Litigation Financing Consumer Protection Act to litigation financing in which the funded amount is $500,000 or less.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Leek offered the following:

Amendment (with title amendment)

Remove lines 41-45 and insert:

Section 1. Part XIII of chapter 559, Florida Statutes, consisting of sections 559.952, 559.953, 559.954, 559.955, 559.956, 559.957, 559.958, 559.959, 559.961, and 559.962, is created and entitled "Litigation Financing Consumer Protection Act."

Remove lines 46-48 and insert:

Section 2. Section 559.952, Florida Statutes, is created to read:

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

Remove lines 84-87 and insert:
specified in s. 559.957(2).
Section 3. Section 559.953, Florida Statutes, is created to read:
559.953 Litigation financier registration; registration

Remove line 122 and insert:
awarded to a consumer under part II of chapter 501.

Remove lines 155-157 and insert:
Section 4. Section 559.954, Florida Statutes, is created to read:
559.954 Litigation financing contracts; terms.—The

Remove lines 175-177 and insert:
Section 5. Section 559.955, Florida Statutes, is created to read:
559.955 Prohibited conduct.—A litigation financier may

Remove lines 223-225 and insert:
Section 6. Section 559.956, Florida Statutes, is created to read:
559.956 Required disclosures.—

Remove lines 282-284 and insert:

Section 7. Section 559.957, Florida Statutes, is created to read:

559.957 Contingent right to proceeds assignable; priority

Remove lines 299-301 and insert:

Section 8. Section 559.958, Florida Statutes, is created to read:

559.958 Interest, fees, charges, and penalties.—

Remove lines 331-334 and insert:

contract under s. 559.954(1).

Section 9. Section 559.959, Florida Statutes, is created to read:

559.959 Litigation financing contracts; discovery.—Except

Remove lines 340-342 and insert:

Section 10. Section 559.961, Florida Statutes, is created to read:

559.961 Effect of communication on privilege.—

Remove lines 348-350 and insert:

Section 11. Section 559.962, Florida Statutes, is created to read:

559.962 Violation; enforcement.—

Remove line 352 and insert:

trade practice actionable under part II of chapter 501.

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

Remove lines 3-34 and insert:

protection; creating part XIII of ch. 559, F.S., entitled "Litigation Financing Consumer Protection Act"; creating s. 559.952, F.S.; providing definitions; creating s. 559.953, F.S.; requiring litigation financiers to register with the Department of State before engaging in litigation financing; providing registration requirements; requiring litigation financiers to file a surety bond meeting specified requirements; requiring the department serve notice to such financiers and to revoke such registrations for certain noncompliance; authorizing the department to adopt rules; creating s. 559.954, F.S.; providing requirements for litigation financing contracts; creating s. 559.955, F.S.; prohibiting litigation financiers from engaging in specified conduct; creating s. 559.956, F.S.; providing disclosure requirements for litigation financing contracts; creating s. 559.957, F.S.; providing for the assignment of contingent rights to civil action or

claim proceeds; specifying the priority of liens against or rights to civil action or claim proceeds; creating s. 559.958, F.S.; authorizing litigation financiers to assess specified interest, fees, and charges; providing requirements for such interest, fees, and charges; prohibiting a litigation financier from assessing specified fees or charges; creating s. 559.959, F.S.; requiring the disclosure of litigation financing contracts under specified circumstances; creating s. 559.961, F.S.; providing that specified communications between attorneys and litigation financiers do not affect statutory or common-law privilege; creating s. 559.962, F.S.; providing that

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Leek offered the following:

Amendment

Remove lines 66-67 and insert:

in which a litigation financier provides to a consumer a funded amount of $500,000 or less in exchange for an assignment of the consumer's contingent right to

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7099 PCB SAC 20-06 Essential State Infrastructure
SPONSOR(S): State Affairs Committee; Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	18 Y, 2 N	Johnson	Williamson
1) Commerce Committee		Keating CK	Hamon K.W.H.

SUMMARY ANALYSIS

The bill addresses planning for and locating various types of infrastructure within the state.

Permitting for Use of Public Rights-of-Way by Utilities
Each local government with jurisdiction and control of a public road or publicly owned rail corridor is authorized to prescribe and enforce reasonable rules or regulations related to placing and maintaining utility facilities across, on, or within the right-of-way (ROW) limits of a road or publicly owned rail corridor under its jurisdiction.

The bill provides that all permit applications required by a county or municipality for use of the public ROW for any type of utility must be processed within specified timeframes. Under this process, a completed permit application is deemed approved if the authority fails to approve or deny the application within 60 days of receipt, unless the review period is extended by mutual agreement.

Electric Vehicle Charging Station Infrastructure
Due to their efficiency, low operating costs, and low emissions profiles, interest in electric vehicles (EVs) is increasing. However, the commercial success of EVs has been restricted in part due to their relatively high up-front cost and limited range as compared to conventional gasoline-powered vehicles. Successful adoption of EVs is dependent on the accessibility of charging stations.

The bill requires DOT, in coordination with other entities, to develop and adopt a master plan for EV charging stations on the state highway system by July 1, 2021. The bill provides goals and objectives for the master plan and requires DOT to update its master plan annually.

Conservation Easements
Current law defines a conservation easement as a right or interest in real property which is appropriate for retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses.

The bill specifies that, for any land used for agriculture and subject to a conservation easement, the owner of the land is not prohibited from voluntarily negotiating the use of the land for any public or private linear facility, right of access, and related appurtenances.

The bill includes a finding that it fulfills an important state interest.

The bill has a fiscal impact on state government and may have a fiscal impact on local governments. *See* Fiscal Analysis.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Permitting for Use of Public Rights-of-Way by Utilities

Present Situation

Pursuant to s. 337.401, F.S., the Department of Transportation (DOT) and each local government that has jurisdiction and control of public roads or publicly owned rail corridors is authorized to prescribe and enforce reasonable rules or regulations related to placing and maintaining utility facilities across, on, or within the right-of-way (ROW) limits of any road or publicly owned rail corridors under its jurisdiction. Each of these types of entities is individually referred to as an "authority" when acting in this capacity. Each authority may authorize any person who is a resident of this state, or any corporation which is organized under the laws of this state or licensed to do business within this state, to use a public ROW for a utility[1] in accordance with the authority's rules or regulations. A utility may not be installed, located, or relocated within a public ROW unless authorized by a written permit.

In 2017, the Legislature established an expedited permitting process for small wireless facilities[2] (SWF) that a wireless provider[3] seeks to place in the public ROW.[4] Under this process, a completed permit application for a SWF is deemed approved if the authority fails to approve or deny the application within 60 days of receipt. This review period may be extended by mutual agreement. If an application is denied, the applicant may cure the deficiencies and submit a revised application within 30 days after denial. The revised application is deemed approved if the authority does not approve or deny it within 30 days of receipt. If the authority provides for administrative review of its denial of an application, the authority must complete its review and issue a written decision within 45 days of a written request for review.

In 2019, the Legislature expanded the application of this expedited permitting process to include all communications facilities that a provider of communications services[5] seeks to place in the public

---

[1] S. 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404" as a "utility."

[2] "Small wireless facility," s. 337.401(7)(b)10., F.S., means a wireless facility that meets the following qualifications:

- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures. S. 337.401(7)(b)10., F.S.

[3] "Wireless provider" means wireless infrastructure provider or a wireless services provider. S. 337.401(7)(b)14., F.S.

[4] Ch. 2017-136, L.O.F., codified in pertinent part at s. 337.401(7)(d)7.-9., F.S.

[5] "Communications services" means "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added." The term does not include: information services; installation or maintenance of wiring or equipment on a customer's premises; the sale or rental of tangible personal property; the sale of advertising, including, but not limited to, directory advertising; bad check charges; late payment charges; billing and collection services; or Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services. Ss. 337.401(5) and 202.11(1), F.S.

ROW.[6] No timeframes are specified in current law for processing permit applications to use the public ROW for any other type of utility.

Effect of Proposed Changes

The bill provides that all permit applications required by a county or municipality for use of the public ROW for any type of utility[7] must be processed within the expedited timeframe that currently applies only to permit applications submitted for communications facilities. Thus, the bill expands application of the expedited permitting process to include public ROW permits for, among other things, electric, natural gas, water, and sewer facilities.

Electric Vehicle Charging Station Infrastructure

Present Situation

Due to their efficiency, low operating costs, and low emissions profiles,[8] interest in electric vehicles (EVs) is increasing. However, the commercial success of EVs has been restricted in part due to their relatively high up-front cost and limited range as compared to conventional gasoline-powered vehicles.[9] While advancements in EV-related technology are continuing, EV manufacturing is rising, and EV prices are dropping, representatives in both the government and the private sectors acknowledge that successful adoption of EVs is dependent on the accessibility of charging stations.[10]

EV charging equipment is generally classified based on the rate at which the equipment charges the EV batteries. Charging times vary depending on the depletion level of the battery, how much energy the battery holds, the type of battery, and the type of supply equipment. According to the Alternative Fuels Data Center (AFDC), charging times can range from less than 20 minutes to 20 hours or more. Potential driving distance ranges from:

- Two to five miles of range per one hour of charging for AC Level 1 supply equipment;
- Ten to 20 miles per one hour of charging for AC Level 2 supply equipment; and
- Sixty to 80 miles per 20 minutes of charging for DC fast charging supply equipment.[11]

According to AFDC, EV charging for most drivers occurs at home or at fleet facilities.[12]

Level 1 (home) charging cords come as standard equipment on new EVs, require only a standard 120-volt outlet, and can add about 50 miles of range in an overnight charge. Level 1 charging is sufficient for low- and medium-range EV drivers with relatively low daily driving.[13]

Level 2 (home and public) charging commonly requires a 240-volt circuit, with the charging rate dependent on the rate at which a vehicle can accept a charge and the maximum current available. An eight-hour charge adds about 180 miles of range with a typical 30-amp circuit. This method may require the purchase of a home charging unit and modifications to a home electric system, but charges

---

[6] Ch. 2019-131, L.O.F.

[7] *Supra* note 96.

[8] *See* U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy, *Electric Vehicle Benefits,* https://www.energy.gov/eere/electricvehicles/electric-vehicle-benefits (last visited Feb, 24, 2020).

[9] *See* the Federal Highway Administration's *FHWA NHTS Brief, Electric Vehicle Feasibility*, July 2016, pp. 1-2, available at https://nhts.ornl.gov/briefs/EVFeasibility20160701.pdf (last visited Feb. 24, 2020).

[10] *Id.* at p. 2. *See also* CBS Chicago, *Electric Vehicle Sales on the Rise, But More Charging Stations Needed To Keep the Trend Going*, September 19, 2019, available at https://chicago.cbslocal.com/2019/09/19/electric-vehicles-super-fast-charging-stations/ (last visited Feb. 24, 2020).

[11] *See* Alternative Fuels Data Center (AFDC), *Developing Infrastructure to Charge Plug-In Electric* Vehicles, https://afdc.energy.gov/fuels/electricity_infrastructure.html (last visited Feb. 24, 2020).

[12] *Id.*

[13] Union of Concerned Scientists, *Electric Vehicle Charging* (March 2018) available at https://www.ucsusa.org/resources/electric-vehicle-charging-types-time-cost-and-savings (last visited Feb. 24, 2020).

from two to eight times faster than a Level 1, depending on the amperage and the vehicle. These chargers are most commonly found at public charging places like offices, grocery stores, and parking garages.[14]

DC Fast Chargers (public charging) can typically add 50 to 90 miles of range in 30 minutes, depending on the charging station's power capacity and the make of the EV. These chargers are best used for longer travel distances; vehicles used the major portion of a day, such as taxis; and for vehicles whose drivers have limited access to home charging.[15]

Under Florida law, the provision of EV charging to the public by a nonutility is not considered the retail sale of electricity.[16] Thus, EV charging providers are not subject to regulation by the Public Service Commission (PSC) as public utilities. To provide consistency for consumers and industry, the Department of Agriculture and Consumer Services (DACS) is required to adopt rules establishing definitions, methods of sale, labeling requirements, and price-posting requirements for EV charging stations.[17]

Through the state Office of Energy, DACS maintains a database of public EV charging station locations in Florida, listed by county on its website. The website identifies 930 charging station locations by specific address.[18] In addition, the Office of Energy is currently working on an EV Roadmap with the goals of:

- Identifying EV charging infrastructure impacts on the electric grid;
- Identifying solutions for any negative impacts;
- Locating areas that lack EV charging infrastructure;
- Identifying best practices for siting EV charging stations; and
- Identifying technical or regulatory barriers to expansion of EV charging infrastructure.[19]

Established in 1993 as part of the U.S. Department of Energy's Vehicle Technologies Office, Clean Cities coalitions have funded hundreds of transportation projects nationwide in furtherance of their mission to foster the nation's economic, environmental, and energy security by working locally to advance affordable, domestic transportation fuels, energy efficient mobility systems, and other fuel-saving technologies and practices.[20] Clean Cities coalitions are comprised of businesses, fuel providers, vehicle fleets, state and local government agencies, and community organizations. Each coalition is led by a coordinator who tailors projects and activities to capitalize on the unique opportunities within their communities. The U.S. Department of Energy has designated four Clean Cities coalitions in Florida: North Florida, Central Florida, Tampa, and Southeast Florida.[21]

Effect of Proposed Changes

The bill requires DOT, in coordination with the state Office of Energy and the designated Clean Cities coalitions in Florida, or other appropriate public or private entities, to develop and adopt a master plan

---

[14] *Id.*
[15] *Id.*
[16] S. 366.94(1), F.S.
[17] S. 366.94(2), F.S. DACS has incorporated into its rules, by reference, various sections of the National Institute of Standards and Technology (NIST), Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, 2017 Edition, regarding the sale of various fuels. *See* Rule 5J-22.003, F.A.C.
[18] Florida Department of Agriculture and Consumer Services, Office of Energy, *Transportation*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Transportation (last visited Feb. 24, 2020); s. 377.815, F.S., authorizes DACS to post information on its website relating to alternative fueling stations, including EV charging stations, available for public use.
[19] DACS, Agency Analysis of 2020 Senate Bill 452, p.2. (Oct. 9, 2019).
[20] U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy, *Clean Cities Coalition Network*, https://cleancities.energy.gov/ (last visited Feb. 24, 2020).
[21] *Id.*

for EV charging stations on the state highway system (SHS) by July 1, 2021, and to update it annually by July 1.

The master plan's goals and objectives include, but are not limited to:

- Identifying optimal locations on the SHS for the development of EV charging stations to facilitate EV short-range and long-range travel and adequately serving evacuation routes;
- Identifying locations that would serve existing EVs or encourage the expansion of EV use;
- Evaluating and comparing the types of EV charging stations available at present and in the future, including the technology and infrastructure incorporated in such stations, for the purpose of identifying any advantages to developing a particular type of station;
- Evaluating the economic potential for EV charging stations and considering strategies to develop that potential, including methods for building partnerships with local governments, other state and federal entities, electric utilities, the business community, and the public in support of EV charging stations; and
- Identifying specific projects that will accomplish these goals and objectives.

Conservation Easements

Present Situation

Current law defines a conservation easement as a right or interest in real property, which is appropriate for:

- Retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition;
- Retaining such areas as suitable habitat for fish, plants, or wildlife;
- Retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or
- Maintaining existing land uses.[22]

A conservation easement must prohibit or limit any or all of the following:

- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- Removal or destruction of trees, shrubs, or other vegetation;
- Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- Acts or uses detrimental to such retention of land or water areas; or
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.[23]

Notwithstanding the restrictions imposed by conservation easements, the owner of the land, or the owner of the conservation easement over the land, may voluntarily negotiate the sale or utilization of such lands or easement for the construction and operation of linear facilities (e.g., public transportation corridors and electric, telecommunication, or pipeline transmission lines and distribution facilities).[24]

---

[22] S. 704.06(1), F.S.
[23] *Id.*
[24] S. 704.06(11), F.S.

Conservation easements are acquired in the same manner as other property interests, with the exception of condemnation or eminent domain proceedings.[25] Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving sites or properties of historical, architectural, archaeological, or cultural significance.[26]

Conservation easements are perpetual, undivided interests in property that are created or stated in a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the property owner, or in any order of taking.[27] They must be recorded and indexed in the same manner as any other instrument affecting the title to real property.[28]

DACS, on behalf of the Board of Trustees of the Internal Improvement Trust Fund, may allocate money to enter into agreements in order to promote and improve wildlife habitat; protect and enhance water bodies, aquifer recharge areas, wetlands, and watersheds; perpetuate open space on lands with significant natural areas; and protect agricultural[29] lands threatened by conversion to other uses.[30] To achieve these purposes, DACS may accept applications for project proposals that purchase conservation easements.[31]

Effect of Proposed Changes

The bill specifies that, for any land that has traditionally been used for agriculture and is subject to a conservation easement, the conservation easement laws do not limit the owner of the land from voluntarily negotiating the use of the land for any public or private linear facility, right of access, and related appurtenances.

The bill specifies that the only remedy to the owner of the conservation easement for the construction and operation of any public or private linear facilities and related access and appurtenances is reasonable compensation based on diminution of value of its interest in the conservation easement.

The bill specifies that it does not preclude the applicability of any environmental permitting requirements applicable to a linear facility under state law or agency rules.

B. SECTION DIRECTORY:

Section 1. Amends s. 337.401, F.S., relating to the use of right-of-way for utilities.

Section 2. Creates s. 339.287, F.S., relating to EV charging station master plan requirements.

Section 3. Amends s. 704.06, F.S., relating to conservation easements.

Section 4. Provides a statement of important state interest.

Section 5. Provides an effective date of July 1, 2020.

---

[25] S. 704.06(2), F.S.
[26] S. 704.06(3), F.S.
[27] S. 704.06(2), F.S.
[28] S. 704.06(5), F.S.
[29] S. 570.02(1), F.S., defines the term "agriculture" as the production of plants and animals useful to humans, including aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.
[30] S. 570.71(1), F.S.
[31] S. 570.71(2)(a), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

The bill has an indeterminate negative fiscal impact to DOT associated with the development of the master plan. DACS may incur a negative fiscal impact associated with assisting DOT in preparing the master plan. The departments should be able to absorb the impacts within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

Counties and municipalities may incur expenditures associated with complying with the specified timeframes to approve permits for utilities within their rights-of-way. However, the expenditures may be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring specified timeframes for local governments to process utility ROW permits may reduce permit processing times in some cases for companies wishing to place utilities in the public ROW. The bill allows an owner of land that has traditionally been used for agriculture and is subject to a conservation easement to voluntarily negotiate the use of the land for any public or private linear facility, right of access, and related appurtenances. This provision may result in a positive fiscal impact to the private sector for those individuals who negotiate for the additional use of such easements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill requires counties and municipalities to act on applications for permits relating to the use of rights-of-way for utilities within a specified timeframe. However, an exemption may apply if the provisions are found to have an insignificant fiscal impact. In addition, an exception may apply if the bill is approved by a two-thirds vote of the membership of each house because the bill includes a finding that it fulfills an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to essential state infrastructure; amending s. 337.401, F.S.; specifying permit application timeframes required for the installation, location, or relocation of utilities within rights-of-way; creating s. 339.287, F.S.; defining the term "master plan for electric vehicle charging stations" or "master plan"; requiring the Department of Transportation, in coordination with the Office of Energy within the Department of Agriculture and Consumer Services and the Florida Clean Cities Coalitions, or other appropriate entities, to develop and adopt by a specified date a master plan for electric vehicle charging stations on the state highway system; specifying goals and objectives of the master plan; requiring the master plan to be updated annually by a specified date; amending s. 704.06, F.S.; providing construction relating to the rights of an owner of land that has been traditionally used for agriculture and is subject to a conservation easement; providing construction relating to applicability of certain permit requirements; providing a declaration of important state interest; providing an effective date.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

Section 1. Subsection (2) of section 337.401, Florida Statutes, is amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(2) The authority may grant to any person who is a resident of this state, or to any corporation that ~~which~~ is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. A ~~No~~ utility may not ~~shall~~ be installed, located, or relocated unless authorized by a written permit issued by the authority. However, for public roads or publicly owned rail corridors under the jurisdiction of the department, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit. The permit must ~~shall~~ require the permitholder to be responsible for any damage resulting from the issuance of such permit. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto. A permit application required under this subsection by a county or municipality having jurisdiction and control of the right-of-way of any public road must be processed and acted upon in accordance with

the timeframes provided in subparagraphs (7)(d)7., 8., and 9.

Section 2. Section 339.287, Florida Statutes, is created to read:

339.287 Electric vehicle charging stations; master plan requirements.—

(1) As used in this section, the term "master plan for electric vehicle charging stations" or "master plan" means a comprehensive plan of the department which describes current and future plans for the development of electric vehicle charging stations on the state highway system.

(2) The department, in coordination with the Office of Energy within the Department of Agriculture and Consumer Services and the Florida Clean Cities Coalitions designated by the United States Department of Energy, or other appropriate public or private entities, shall develop and adopt a master plan for electric vehicle charging stations on the state highway system by July 1, 2021.

(3) The goals and objectives of the master plan include, but are not limited to, all of the following:

(a) Identifying optimal locations on the state highway system for the development of electric vehicle charging stations as a means of facilitating electric vehicle short-range and long-range travel and adequately serving evacuation routes in this state.

(b) Identifying locations that would serve existing

electric vehicles or encourage the expansion of electric vehicle use in this state.

(c) Evaluating and comparing the types of electric vehicle charging stations available at present and in the future, including the technology and infrastructure incorporated in such stations, for the purpose of identifying any advantages to developing a particular type of station.

(d) Evaluating the economic potential for electric vehicle charging stations in this state and considering strategies to develop that potential, including, but not limited to, methods of building partnerships with local governments, other state and federal entities, electric utilities, the business community, and the public in support of electric vehicle charging stations.

(e) Identifying specific projects that will accomplish the goals and objectives of this section.

(4) After its adoption, the master plan shall be updated annually by July 1.

Section 3. Subsection (11) of section 704.06, Florida Statutes, is amended to read:

704.06 Conservation easements; creation; acquisition; enforcement.—

(11)(a) ~~Nothing in~~ This section or other provisions of law do not ~~shall be construed to~~ prohibit or limit the owner of land, or the owner of a conservation easement over land, to voluntarily negotiate the sale or use ~~utilization~~ of such lands

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

or easement for the construction and operation of linear facilities, including electric transmission and distribution facilities, telecommunications transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances, nor does ~~shall~~ this section prohibit the use of eminent domain for said purposes as established by law. In any legal proceeding to condemn land for the purpose of construction and operation of a linear facility as described above, the court shall consider the public benefit provided by the conservation easement and linear facilities in determining which lands may be taken and the compensation paid.

(b) For any land that has traditionally been used for agriculture, as that term is defined in s. 570.02, and is subject to a conservation easement entered into at any time pursuant to s. 570.71, this section or s. 570.71 does not limit the owner of the land to voluntarily negotiating the use of the land for any public or private linear facility, right of access, and related appurtenances, and reasonable compensation based on diminution in value of its interest in the conservation easement shall be the only remedy to the owner of the conservation easement for the construction and operation of any public or private linear facilities and related access and appurtenances.

(c) This section does not preclude the applicability of any environmental permitting requirements applicable to a linear

facility pursuant to chapters 369-380 or chapter 403 or any agency rules adopted pursuant to those chapters.

Section 4. The Legislature finds and declares that this act fulfills an important state interest.

Section 5. This act shall take effect July 1, 2020.

PCS for
CS/CS/HB 895

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/CS/HB 895 Insurance
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Lloyd	Hamon

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

Civil Remedies against Insurers

Florida law imposes a duty of good faith on an insurer in negotiating the settlement of a claim with the insured or a third party. This means the insurer must attempt in good faith to settle a claim when, under the circumstances, it can settle if it acts fairly and honestly toward its insured and with due regard to his or her interest. An insurer acting in bad faith may harm the insured party, by failing to settle a third party's claim against the insured, exposing the insured to greater liability. It could also harm a third party to the insurance contract by failing to settle its claim against the insured. Either an insured or a third party to the insurance contract can sue the insurer for bad faith. A jury decides whether the insurer acted in bad faith and determines the amount of damages.

- Claimant's Good Faith Requirement – The bill creates a statutory good faith obligation on the insured, claimant, and the representative of the insured or claimant. In an action alleging insurer bad faith, the jury (or judge, in a bench trial) must consider whether the plaintiff and their representative acted in good faith and if they failed to so act, make a reasonable reduction in the damages awarded, if any.
- Bar to Civil Remedy – The bill prohibits a third-party lawsuit for insurer bad faith in a liability claim, if there is a single claimant and the insurer paid the lesser of the claimant's demand or policy limits or if there are multiple claimants and the insurer submits the matter at policy limits to the court for resolution of the claimant's percentage share of the policy limit amount either within 90 days following the second notice of claim or during the 60-day cure period following receipt of the required pre-suit notice.
- Filing of Pre-Suit Notice and Tolling of Statute of Limitation – Florida law requires a pre-suit notice to the Department of Financial Services (DFS) and the insurer 60 days prior to suing on a bad faith claim, but no particular insurer address is specified. The bill requires the insurer to designate an email address for delivery of the notice and mandates that DFS forward notices to that email. It starts the 60 days from the day the insurer receives the forwarded notice. Also, it extends the statute of limitation for 60 days, if the property appraisal process is invoked in the claim.

Motor Vehicle Personal Injury Protection

Florida's Motor Vehicle No-Fault Law requires motorists to carry no-fault insurance known as personal injury protection (PIP) coverage. In exchange for a limited exemption from tort liability, drivers receive $10,000 in emergency medical and disability benefits ($2,500 for non-emergency medical conditions) and certain other benefits. Medical benefit payments are overdue if not paid within 30 days. Medical providers may sue insurers for overdue payments only after filing a written pre-suit notice known as a PIP demand letter. The law specifies the minimum content of the demand letter.

- Pre-Suit Notice (Demand Letter) –The bill increases requirements governing the content of the demand letter, including line item detailing of the amounts in dispute and proof of emergency medical condition, if applicable. It requires the demand letter to substantially comply with statutory requirements. The bill bars a subsequent lawsuit if the demand letter was not substantially compliant, the insurer fully paid the claim, or the charge was not included on a demand letter.

The bill has no impact on state or local government revenues or expenditures. It may have a positive impact on the private sector.

The bill is effective on July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Obligations of Insurer to Insured

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend. The duty to indemnify refers to the insurer's obligation to issue payment either to the insured or a beneficiary on a valid claim. The duty to defend refers to the insurer's duty to provide a defense for the insured in court against a third party with respect to a claim within the scope of the insurance contract.[1] The Florida Supreme Court explained the difference between indemnity policies and liability policies:

> Under indemnity policies, the insured defended the claim and the insurance company simply paid a claim against the insured after the claim was concluded. Under liability policies, however, insurance companies took on the obligation of defending the insured, which, in turn, made insureds dependent on the acts of the insurers; insurers had the power to settle and foreclose an insured's exposure or to refuse to settle and leave the insured exposed to liability in excess of policy limits.[2]

Historically, damages in actions for breaches of insurance contracts were limited to those contemplated by the parties when they entered into the contract.[3] As liability policies began to replace indemnity policies as the standard insurance policy form, courts recognized that insurers owed a duty to act in good faith towards their insureds.[4]

Common Law and Statutory Bad Faith

Florida courts for many years have recognized an additional duty that does not arise directly from the insurance contract, the common law duty of good faith on the part of an insurer to the insured in negotiating settlements with third-party claimants.[5] The common law rule is that a third-party beneficiary who is not a formal party to a contract may sue for damages sustained as the result of the acts of one of the parties to the contract.[6] This is known as a third-party claim of bad faith.

At common law, the insured cannot raise a bad faith claim against the insurer outside of the third-party claim context.[7] In 1982, the Legislature enacted s. 624.155, F.S. Section 624.155, F.S., recognizes a claim for bad faith against an insurer not only in the instance of settlement negotiations with a third party but also for an insured seeking payment from his or her own insurance company. This is known as a first-party claim of bad faith.

Section 624.155, F.S., provides that any party may bring a bad faith civil action against an insurer, and defines bad faith on the part of the insurer as:

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or

---

[1] *See* 16 Williston on Contracts s. 49:103 (4th Ed.).
[2] *State Farm Mutual Automobile Insurance Company v. Laforet*, 658 So.2d 55, 58 (Fla. 1995).
[3] *Id.*
[4] *Id.*
[5] *Auto. Mut. Indem. Co. v. Shaw*, 184 So. 852 (Fla. 1938).
[6] *Thompson v. Commercial Union Insurance Company*, 250 So.2d 259 (Fla. 1971).
[7] *Laforet*, 658 So.2d at 58-59.

- Except as to liability coverages, failing to promptly settle claims, when the obligation to settle the claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.[8]

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer 60 days written notice of the alleged violation. The insurer has 60 days after the required notice is filed to pay the damages or correct the circumstances giving rise to the violation.[9] Because first-party claims are only statutory, a first-party insurer bad faith cause of action does not exist until the 60-day cure period provided in the statute expires without payment by the insurer.[10] Third-party claims, on the other hand, exist both in statute and at common law, so the insurer cannot guarantee avoidance of a bad faith claim by curing within the statutory period.[11]

In interpreting what it means for an insurer to act fairly toward its insured, Florida courts have held that when the insured's liability is clear and an excess judgment is likely due to the extent of the resulting damage, the insurer has an affirmative duty to initiate settlement negotiations.[12] If a settlement is not reached, the insurer has the burden of showing that there was no realistic possibility of settlement within policy limits.[13] Failure to settle on its own, however, does not mean that an insurer acts in bad faith. Negligent failure to settle does not rise to the level of bad faith. Negligence may be considered by the jury because it is relevant to the question of bad faith but a cause of action based solely on negligence is not allowed.[14]

Third-Party Claims of Bad Faith

A third-party bad faith claim arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage.[15] The Florida Supreme Court has described an insurer's duty to its insureds:

> An insurer, in handling the defense of claims against its insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business. For when the insured has surrendered to the insurer all control over the handling of the claim, including all decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured. This good faith duty obligates the insurer to advise the insured of settlement opportunities, to advise as to the probable outcome of the litigation, to warn of the possibility of an excess judgment, and to advise the insured of any steps he might take to avoid same. The insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. Because the duty of good faith involves diligence and care in the investigation and evaluation of the claim against the insured, negligence is relevant to the question of good faith. The question of failure to act in good faith with due regard for the interests of the insured is for the jury.[16]

---

[8] S. 624.155(1)(b)1.-3., F.S.
[9] *S.* 624.155(3)(d), F.S.
[10] *Talat Emterprises vv. Aetna Casualty and Surety Company*, 753 So.2d 1278, 1284 (Fla. 2000).
[11] *Macola v. Government Employees Insurance Company,* 953 So.2d 451 (Fla. 2006).
[12] *Powell v. Prudential Property and Casualty Insurance Company*, 584 So.2d 12, 14 (Fla. 3d DCA 1991).
[13] *Id.*
[14] *DeLaune v. Liberty Mutual Insurance Company*, 314 So.2d 601,603 (Fla. 4th DCA 1975).
[15] *Opperman v. Nationwide Mutual Fire Insurance Company,* 515 So.2d 263, 265 (Fla. 5th DCA 1987).
[16] *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980)(internal citations omitted).

In light of this heightened duty on the part of the insurer, Florida courts focus on the actions of the insurer, not the claimant.[17] Whether an insurer acted in bad faith is determined by the totality of the circumstances:

> In Florida, the question of whether an insurer has acted in bad faith in handling claims against the insured is determined under the totality of the circumstances standard. Each case is determined on its own facts and ordinarily the question of failure to act in good faith with due regard for the interests of the insured is for the jury.[18]

The focus in a bad faith case is on the conduct of the insurer but the conduct of the claimant is relevant to whether there was a realistic opportunity for settlement.[19] A court, for example, will look at the terms of a demand for settlement to determine if the insurer was given a reasonable amount of time to investigate the claim and make a decision whether settlement would be appropriate under the circumstances. One court held that dismissal of a bad faith claim was proper where the settlement demand in question gave a 10-day window, pointing out that "[i]n view of the short space of time between the accident and institution of suit, the provision of the offer to settle limiting acceptance to 10 days made it virtually impossible to make an intelligent acceptance."[20] Although in this particular circumstance the court found that 10 days was not enough, it is not clear exactly what time period or other conditions for acceptance would be permissible, because courts look at the facts on a case-by-case basis and the current statute is silent on this point.

In *Berges v. Infinity Insurance Company*, dissenting justices expressed concern that there "is a strategy which consists of setting artificial deadlines for claims payments and the withdrawal of settlement offers when the artificial deadline is not met."[21] It was argued that it is a "common practice for a party contemplating litigation to submit a settlement offer that remains outstanding for only a finite period and that a person injured by a policyholder may set any deadlines he desires—even an arbitrary or unreasonable one."[22] Justice Wells concluded that set time periods in which all insurers must make decisions on claims and issue payments are needed.[23]

The majority in *Berges* held that courts must look to the totality of the circumstances. "The question of bad faith in this case extends to [the insurer's] entire conduct in the handling of the claim, including the acts or omissions [of the insurer] in failing to ensure payment of the policy limits within the time demands."[24] Another court argued that setting a "minimum amount of time before any finding of bad faith is possible runs counter to the analysis of ordinary care and prudent business practice... Juries are empaneled to apply the appropriate criteria to the particular facts of a given situation and to decide whether the insurer acted prudently."[25]

In *Harvey v. Geico General Insurance Company*,[26] the Florida Supreme Court explained that the critical inquiry in a bad faith case is whether "the insurer diligently, and with the same haste and precision as if it were in the insured's shoes, worked on the insured's behalf to avoid an excess judgment."[27] The court said an insurer has an affirmative duty to initiate settlement negotiations in cases where liability is clear and a judgment in excess of policy limits is likely.[28] The court said the lower court misapplied precedent when it said an insurer could not be liable for bad faith when the insured's own actions were at least in part responsible for the excess judgment.[29]

---

[17] *Berges v. Infinity Insurance Company*, 896 So.2d 665, 677 (Fla. 2005)(explaining that "the focus in a bad faith case is not on the actions of the claimant but rather on those of the insurer in fulfilling its obligations to the insured").
[18] *Berges*, 896 So.2d at 680 (internal quotations and citations omitted).
[19] *Barry v. GEICO General Insurance Company*, 938 So.2d 613, 618 (Fla. 4th DCA 2006).
[20] *DeLaune v. Liberty Mut. Ins. Co.*, 314 So.2d 601, 603 (Fla. 4th DCA 1975).
[21] *Berges*, 896 So.2d at 685 (Wells, J., dissenting).
[22] *Id.* at 692 (Cantero, J., dissenting).
[23] *Id.* at 686 (Wells, J., dissenting).
[24] *Berges*, 896 So.2d at 627.
[25] *Snowden ex. rel. Estate of Snowden v. Lumbermans Mutual Casualty Company*, 358 F.Supp.2d 1125, 1129 (N.D. Fla. 2003).
[26] *Harvey v. Geico General Insurance Company,* 259 So.3d 1 (Fla. 2018).
[27] *Id.* at 7.
[28] *Id.*
[29] *Id.* at 11.

The Good Faith Duty in a Multiple Claimant Situation

In 2003, the Fourth District Court of Appeal considered how an insurer should carry out its duty of good faith in a case with multiple claimants where the total damages far exceeded policy limits.[30] In that case, the insured caused an automobile accident where five teens were killed and seven more were seriously injured. The insurance company settled with three of the claimants and exhausted policy limits on those settlements. Numerous claimants filed third-party bad faith claims against the insurer alleging the insurer entered into settlements without due regard for the interests of the insured.[31]

The court held that the same duties of good faith set forth in *Boston Old Colony* applied when there were multiple claimants. The insurer must investigate all claims, keep the insured informed, and minimize the amount of excess judgments by reasoned claim settlement. The insurer may still decide to settle some claims and exclude others but the decision must be made "in keeping with its good faith duty."[32]

In *Hernandez v. Travelers Insurance Co.*,[33] the court considered whether an insurance company, which may be liable to several persons because of the negligence of its insured, could file an interpleader action (an action where the court determines the distribution of the funds up to policy limits). The court held that interpleader is not allowed under such circumstances. The court explained:

> The plaintiff insurance company has only the derivative liability from its insured. One of its liabilities is to defend its insured in the courts. It may not discharge that liability by depositing a sum of money and saying to the courts, "divide it up." If the defendants were all claiming the proceeds of a single fund and liability could exist as to only one of the claimants, an interpleader would be appropriate. In the present cause, one action cannot determine the entire controversy and liability may exist as to more than one claimant.[34]

Pre-Suit Notice and Tolling of the Statute of Limitation

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer and the Department of Financial Services (DFS) 60 days' written notice of the alleged violation.[35] The 60-day period begins on the date the notice is filed. While the notice is required to be provided to both DFS and the insurer,[36] the statute is silent on what constitutes filing and whether the filing date is the date the notice is received by DFS or the date it was received by the insurer.[37]

The notice must include:

- The statutory provision which the insurer allegedly violated;
- The facts and circumstances giving rise to the violation;
- The name of any individual involved in the violation;

---

[30] *Farinas v. Florida Farm Bureau General Ins. Co.*, 850 So.2d 555 (Fla. 4th DCA 2003).
[31] *Id.* at 557-558.
[32] *Id.* at 561.
[33] 356 So.2d 1342 (Fla. 3rd DCA 1978).
[34] *See Hernandez*, 356 So.2d at 1344.
[35] S. 624.155(3)(a), F.S.
[36] Filing of the notice with the correct insurer has been held to be a condition precedent to maintaining a bad faith suit against the insurer. *Lopez v. GEICO Casualty Co.*, 968 F.Supp. 2d 1202, at 1209 (S.D. Fla. 2013). In *Lopez*, the plaintiff filed the notice with Government Employees Insurance Company, a similarly named sister company instead of the actual insurer, GEICO Casualty Company. Because the statute of limitation had run out following the flawed delivery of the notice, the *Lopez* case was dismissed with prejudice.
[37] Filing of the notice with DFS has been held to establish the date that starts the 60-day cure period. *Harper v. GEICO Gen. Ins. Co.*, 272 So. 3d 448 (Fla. 2nd DCA 2019). In *Harper*, the plaintiff filed the notice with DFS electronically on Dec. 19, 2013, and mailed the notice to GEICO with it being received by GEICO on Dec. 26, 2013. When GEICO later paid the claim on Feb. 21, 2014, the payment was 65 days from the date DFS received the notice, but 57 days from the date GEICO received the notice. The trial court held that GEICO paid the claim within the 60-day cure period. On appeal, the Second DCA held that the 60-day cure period ran from the date DFS received the notice. The result allowed the plaintiff to pursue a bad faith claim against GEICO for untimely payment of the claim.

- Reference to specific policy language that is relevant to the violation, unless the person bringing the civil action is a third party claimant; and
- A statement that the notice is given to perfect the right to pursue a civil remedy.[38]

The statute of limitation for the filing of a lawsuit under s. 624.155, F.S., is tolled for 65 days following the issuance of the notice described above. This extends the claimant's right to sue the insurer until after the conclusion of the 60-day period following the notice within which the insurer may respond to the notice by addressing the alleged violation.

Effect of the bill

Claimant's Good Faith Requirement

The bill creates a statutory good faith obligation on the insured, claimant, and the representative of the insured or claimant. They must act in good faith in providing claim information, their demands against the insurer, including setting deadlines that the insurer is expected to abide by, and in negotiating settlement opportunities.

In any action claiming insurer bad faith under s. 624.155(1)(b)1., F.S., the jury (or the judge, in the case of a bench trial) must consider whether the insured or claimant, as applicable, or their representative made good faith efforts to cooperate with the insurer's claim investigation. If the jury or judge, as applicable, determines that they failed to act in good faith, then the jury or judge must make a reasonable reduction in the damages awarded.

Bar to Civil Remedy against Insurers

In a third-party action for insurer bad faith regarding a liability claim, the action is barred, if:

- There is a single claimant and the insurer pays the claimant's demand or offers the policy limits, whichever is less, during the pendency of the claim through the end of the 60-day cure period following receipt of the required pre-suit notice.
- There are two or more claimants related to a single event whose combined claims exceed policy limits and the insurer submits the matter to the court to allow the court to determine the each claimant's relative share of the policy limits. Submission of the matter to the court must occur within 90 days of the second claimant filing a notice of claim or during the 60-day cure period that follows insurer receipt of the required pre-suit notice. Nonetheless, the insurer remains obligated to defend the insured.

Filing of the Pre-Suit Notice and Tolling of the Statute of Limitation

The bill provides that DFS must forward the required pre-suit notice via email to the insurer. It also requires the insurer to designate an email address for the purposes of receiving such notices forwarded by DFS. Additionally, the bill clarifies that the 60-day cure period runs from the date the insurer receives the notice from DFS at the designated email address, rather than following "filing," which is not currently defined. Since the notices will no longer be mailed and emailing them is a nearly instantaneous process, the bill changes the statute of limitation tolling period from 65 days to 60 days, thus removing the 5 days allotted for physical mailing through the postal service.

Motor Vehicle Personal Injury Protection – Pre-Suit Notice (Demand Letter)

Florida's Motor Vehicle No-Fault Law (No-Fault Law)[39] requires motorists to carry no-fault insurance known as personal injury protection (PIP) coverage. The purpose of PIP coverage under the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to who is responsible for a motor vehicle accident. In return for assuring payment of these benefits, the No-

[38] S. 624.155(3)(b), F.S.
[39] Ss. 627.730-627.7405, F.S.

Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry $10,000 of PIP coverage.[40] However, motorcycles are excluded from this requirement.

PIP General Provisions

Required Coverage	All owners or registrants of motor vehicles with four or more wheels, except school buses, limos, and taxicabs, are required to carry PIP.[41]
Individuals Covered	The named insured, relatives living in the same household, persons operating the vehicle, passengers in the vehicle, and persons struck and injured while not occupying the vehicle.
Tort Limitation	Limited exemption from tort liability; injured persons may pursue certain tort claims as specified by the PIP law.
Benefits	$10,000 in emergency medical and disability benefits (limited to $2,500 in medical benefits for non-emergency medical conditions) and $5,000 in death benefits. Coverage of 60 percent of lost income due to disability, not to exceed the $10,000 overall benefit limitation.
Timely Treatment	Medical benefits are paid only if initial treatment is received within 14 days of the accident.
Timely Payment	Payments are overdue if not paid within 30 days of insurer receipt of written notice.
Medical Reimbursement	80 percent of reasonable medical expenses paid to eligible medical providers.[42]
Excluded Treatment	Massage and acupuncture are not PIP medical benefits. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.
Attorney Fees	Prevailing insureds and beneficiaries may receive a reasonable attorney fees award.

Pre-Suit Notice (Demand Letter)

Before anyone can sue for benefits under PIP coverage, they must file a written pre-suit notice with insurer. The pre-suit notice cannot be filed until the claim payment is overdue. The notice must include the following:

- The phrase "demand letter under s. 627.736";
- The name of the insured;
- A copy of assignment of rights, if the matter is brought by a third-party;
- The claim number or policy number;
- And the following, if the circumstances apply:
  - Name of the medical provider (for treatment, services, accommodations, or supplies);
  - An itemized statement specifying:[43]
    - The exact amount;

[40] S. 627.7275, F.S. Under Florida's Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for Bodily Injury and Property Damage liability at the time of motor vehicle accidents or when serious traffic violations occur. The Financial Responsibility Law requires $10,000, per person, and $20,000, per incident, of Bodily Injury coverage, and $10,000 of Property Damage liability coverage.

[41] This includes non-resident owners who keep a vehicle in Florida for more than 90 days during the previous 365 day. S. 627.733(2), F.S.

[42] Insurers may limit reimbursements to a fee schedule tied to the Medicare allowed amount. S. 627.736(5)(a)1., F.S. For many services, 80 percent of 200 percent of the Medicare allowed amount is the standard reimbursement under this fee schedule.

[43] A completed claim form [CMS 1500 form, UB-92 form (HICFA 1450), or form adopted by the Office of Insurance Regulation, as applicable] or lost wage statement previously submitted to the insurer may be used as the itemized statement. S. 627.736(10)(b)3., F.S. The CMS 1500 form and UB-92 form (HICFA 1450) are standardized medical billing forms.

        - Date of treatment, service, or accommodation; and
        - The type of benefit due;
    - If the demand letter is responding to a withdrawal of pre-payment for services:
        - A copy of the insurer's notice of withdrawal; and
        - An itemized statement of the type, frequency, and duration of future treatment claimed to be reasonable and medically necessary.

The demand letter must be sent by certified or registered U.S. Mail, return receipt requested.[44] The letter must be sent to the name and address designated by the insurer for receipt of PIP demand letters pursuant to statute.[45]

Civil actions on the claim detailed in the demand letter are barred if the insurer pays the overdue claim, along with a 10 percent penalty and interest (not to exceed $250), within 30 days of receipt of the letter.[46] The insurer is not liable for the claimant's attorney fees if they timely comply with these requirements.

The filing of a demand letter tolls the applicable statute of limitations for 30 days.

Effect of the bill

The bill applies the demand letter requirements to any related relief (i.e., attorney fees), in addition to the PIP benefits sought by the claimant. It also adds the following requirements:

- The demand letter must also include:
    - A copy of the signed assignment of rights, if the claimant is not the insured;
        - The assignment must predate the treatment, service, or accommodation, as applicable;
    - Both the claim number and the policy number, rather than one or the other;
    - The itemized statement must:
        - Identify each treatment, service, or accommodation provided to the insured;
        - Specify, using the previously billed line items, the:
            - Date of each treatment, service, or accommodation;
            - Amount charged; and
            - Include the CMS 1500 form, UB-92 (HICFA 1450 form), or OIR form, as applicable;
        - Identify all billed line items in dispute;
        - State:
            - The factual or legal basis for the contention that the underpayment or non-payment is incorrect;
            - The amount that the claimant contends the insurer is required to pay, including penalties, interest, and postage due.

If the claimant contends that the insured sustained an emergency medical condition, the demand letter must include documentation of the emergency medical condition from a medical provider allowed under the PIP law to determine such conditions.[47]

The demand letter must substantially comply with the statutory requirements. If it does not substantially comply:

- The penalty and interest due under the statute are waived; and

---

[44] The postal costs may be recovered from the insurer, if they are requested in the demand letter. S. 627.736(10)(c), F.S.

[45] "Each licensed insurer, whether domestic, foreign, or alien, shall file with the [Office of Insurance Regulation] the name and address of the designated person to whom notices must be sent which the [Office of Insurance Regulation] shall make available on its Internet website. The name and address on file with the [Office of Insurance Regulation] pursuant to s. 624.422 is deemed the authorized representative to accept notice pursuant to this subsection if no other designation has been made." S. 627.736(10)(c), F.S.

[46] In cases where the letter responded to a withdrawal of pre-payment of services, the action is barred if the insurer provides a written agreement within 30 days to pay for such services and to pay a 10 percent penalty (not to exceed $250) when the insurer pays for the future treatment. S. 627.736(10)(d), F.S.

[47] Under PIP, non-emergency benefits are limited to $2,500, while emergency medical conditions may increase coverage to $10,000.

- The civil action is barred.

The civil action is also barred if the insurer timely issues full payment within the time allowed to respond to the demand letter with payment, or if the civil action is for a claim for non-payment or underpayment that was not identified on a demand letter.

B. SECTION DIRECTORY:

Section 1: Amends s. 624.155, F.S., relating to civil remedy.
Section 2: Amends s. 624.422, F.S., relating to service of process; appointment of Chief Financial Officer as process agent.
Section 3: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.
Section 4. Providing an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If litigation rates and costs are reduced, consumers may experience lower insurance costs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires the adoption of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insurance; amending s. 624.155, F.S.; revising requirements and procedures for the civil remedy notice provided to insurers and the Department of Financial Services; revising the timeframe for an insurer to pay damages or for certain circumstances to be corrected; revising the period the statute of limitations is tolled; creating a duty of good faith by persons claiming against an insurer; providing that an insurer does not violate its good faith duty to settle claims and is not liable for a certain failure if it meets certain conditions; providing a limitation on an insurer's liability to third-party claimants, under certain circumstances; requiring triers of fact, under certain circumstances, to consider whether insureds, claimants, or their representatives made good faith efforts to cooperate with insurers' investigations; requiring a reduction or elimination of damages awarded against an insurer for bad faith where the insured or claimant has also acted in bad faith; amending s. 624.422, F.S., requiring insurers to file with the department certain contact information for service of process; amending s. 627.736, F.S.; specifying information required as part of a pre-suit notice in motor vehicle personal

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

injury protection claims; requiring information relating to treatment and services provided to claimants; requiring the identification of payments in dispute; requiring claimants to substantially comply with notice requirements; prohibiting relief to claimants in certain circumstances; providing an effective date.

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

Section 1. Subsection (3) of section 624.155, Florida Statutes, is amended to read:

624.155 Civil remedy.—

(3)(a) As a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. Notice to the authorized insurer must be forwarded by the department to the insurer at the e-mail address designated by the insurer under s. 624.422.

(b) The notice shall be on a form provided by the department and shall state with specificity the following information, and such other information as the department may require:

1. The statutory provision, including the specific language of the statute, which the authorized insurer allegedly

violated.

2. The facts and circumstances giving rise to the violation.

3. The name of any individual involved in the violation.

4. Reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third party claimant, she or he shall not be required to reference the specific policy language if the authorized insurer has not provided a copy of the policy to the third party claimant pursuant to written request.

5. A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by this section.

(c)1. No action shall lie if, within 60 days after the insurer receives ~~filing~~ notice from the department in accordance with this subsection, the damages are paid or the circumstances giving rise to the violation are corrected.

2. A third-party claimant shall have no action under sub-paragraph (1)(b)1. if:

a. There is a single claimant in a liability claim and the insurer offers the lesser of policy limits or the claimant's demand prior to the end of the 60 days, including the period prior to the 60 days; or

b. If there are two or more claimants in a liability claim making claims arising out of a single occurrence which in total

exceed the available policy limits of one or more of the insured parties who may be liable to the claimants, an insurer is not liable beyond the available policy limits for failure to pay all or any portion of the available policy limits to one or more of the claimants, if within 90 days after receiving notice of the second claim or during the 60 days the insurer files an interpleader action under the Florida Rules of Civil Procedure. The claimants are entitled to a prorated share of the policy limits as determined by the trier of fact. An insurer's interpleader action does not alter or amend the insurer's obligation to defend its insured.

(d) The authorized insurer that is the recipient of a notice filed pursuant to this section shall report to the department on the disposition of the alleged violation.

(e) The applicable statute of limitations for an action under this section shall be tolled for a period of 60 ~~65~~ days after the insurer receives from the department ~~by the mailing of~~ the notice required by this subsection ~~or the mailing of a subsequent notice required by this subsection~~.

(f) A notice required under this subsection may not be filed within 60 days after appraisal is invoked by any party in a residential property insurance claim.

(10)(a) The insured, claimant, or representative of the insured or claimant has a duty to act in good faith in furnishing information regarding the claim, in making demands of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

the insurer, in setting deadlines, and in attempts to settle a claim. This duty does not create a separate cause of action and may only be used as a setoff against damages awarded pursuant to this subsection.

(b) In any action pursuant to sub-paragraph (1)(b)1.:

1. the trier of fact must consider whether the insured, claimant, or representative of the insured or claimant made good faith efforts to cooperate with the insurer in the investigation of the claim.

2. If the trier of fact finds that the insured, claimant, or representative of the insured or claimant did not act in good faith, the trier of fact must reasonably reduce the damages awarded against the insurer.

Section 2. Subsection (2) of section 624.422, Florida Statutes, is amended to read:

624.422 Service of process; appointment of Chief Financial Officer as process agent.—

(2) Prior to its authorization to transact insurance in this state, each insurer shall file with the department designation of the name and address of the person to whom process against it served upon the Chief Financial Officer is to be forwarded. Each insurer shall also file with the department designation of the name and e-mail address of the person to whom the department shall forward civil remedy notices filed under 624.155. The insurer may change a ~~the~~ designation at any time by

a new filing.

Section 3. Subsection (10) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(10) DEMAND LETTER.—

(a) As a condition precedent to filing any action for benefits or related relief under this section, written notice of an intent to initiate litigation must be provided to the insurer. Such notice may not be sent until the claim is overdue, including any additional time the insurer has to pay the claim pursuant to paragraph (4)(b).

(b) The notice must state that it is a "demand letter under s. 627.736" and state the following with specificity:

1. The name of the insured on whose behalf ~~upon which~~ such benefits are being sought and, if the claimant is not the insured, the notice shall include, ~~including~~ a copy of the assignment signed by the insured prior to the delivery of any such treatment, service or accommodation, and giving rights to the claimant to seek benefits ~~if the claimant is not the insured~~.

2. The claim number and ~~or~~ policy number upon which such claim was originally submitted to the insurer by either the claimant or the insured.

3. Where ~~To the extent~~ applicable, the name of any

medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim against the insurer. The notice shall be accompanied by~~; and~~ an itemized statement identifying each treatment, service or accommodation provided to the insured, and shall specify for each such treatment, service or accommodation on a line item basis as previously billed to the insurer ~~specifying each exact amount,~~ the date of each treatment, service, or accommodation, and the amount charged ~~type of benefit claimed to be due~~. A completed form satisfying the requirements of paragraph (5)(d) or the lost-wage statement previously submitted, as applicable, shall be included with ~~may be used as~~ the itemized statement. To the extent that the demand involves an insurer's withdrawal of payment under paragraph (7)(a) for future treatment not yet rendered, the claimant shall attach a copy of the insurer's notice withdrawing such payment and an itemized statement of the type, frequency, and duration of future treatment claimed to be reasonable and medically necessary.

4. The identification of all line items that the claimant contends to be in dispute because of an insurer's non-payment or underpayment, the legal or factual basis for the claimant's position that the insurer's underpayment payment or non-payment is incorrect, and the amount that the clamant contends that the insurer is required to pay to fully

resolve the dispute, including the specific amount of the statutory penalty, interest and postage to be paid pursuant to paragraphs (d) and (e).

(c) If the claimant contends that the insured had an emergency medical condition, the notice shall be accompanied by documentation demonstrating that the insured to whom the treatment, services or accommodation was provided sustained an emergency medical condition. The documentation shall be from a provider identified in sub-paragraphs (1)(a)(1) or (1)(a)(2).

(d) ~~(c)~~ Each notice required by this subsection must substantially comply with the requirements of paragraphs (b) and (c) and must be delivered to the insurer by United States certified or registered mail, return receipt requested. A notice that does not substantially comply with the requirements of paragraphs (b) and (c) shall not trigger an insurer's obligations under (e). Such postal costs shall be reimbursed by the insurer if requested by the claimant in the notice, when the insurer pays the claim. Such notice must be sent to the person and address specified by the insurer for the purposes of receiving notices under this subsection. Each licensed insurer, whether domestic, foreign, or alien, shall file with the office the name and address of the designated person to whom notices must be sent which the office shall make available on its Internet website. The name and address

on file with the office pursuant to s. 624.422 is deemed the authorized representative to accept notice pursuant to this subsection if no other designation has been made.

(e) ~~(d)~~ If, within 30 days after receipt of notice by the insurer, the overdue claim specified in a ~~the~~ notice that substantially complies with paragraphs (b) and (c) is paid by the insurer together with applicable interest and a penalty of 10 percent of the overdue amount paid by the insurer, subject to a maximum penalty of $250, no action may be brought against the insurer. If the demand involves an insurer's withdrawal of payment under paragraph (7)(a) for future treatment not yet rendered, no action may be brought against the insurer if, within 30 days after its receipt of the notice, the insurer mails to the person filing the notice a written statement of the insurer's agreement to pay for such treatment in accordance with the notice and to pay a penalty of 10 percent, subject to a maximum penalty of $250, when it pays for such future treatment in accordance with the requirements of this section. To the extent the insurer determines not to pay any amount demanded, the penalty is not payable in any subsequent action. For purposes of this subsection, payment or the insurer's agreement shall be treated as being made on the date a draft or other valid instrument that is equivalent to payment, or the insurer's written statement of agreement, is placed in the United States mail in a properly addressed,

postpaid envelope, or if not so posted, on the date of delivery. The insurer is not obligated to pay any attorney fees if the insurer pays the claim or mails its agreement to pay for future treatment within the time prescribed by this subsection.

(f) ~~(e)~~ The applicable statute of limitation for an action under this section shall be tolled for 30 business days by the mailing of a ~~the~~ notice required by this subsection.

(g) No action shall be filed or prosecuted by or on behalf of a claimant seeking benefits or related relief against an insurer:

1. if a substantially compliant notice is not sent to an insurer;

2. the insurer issued full payment to the claimant in response to a notice within the time frame prescribed by paragraph (e); or

3. asserting a claim of non-payment or underpayment of benefits not identified in the notice.

Section 4. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

PCS for CS/CS/HB 895
Insurance

AMENDMENT SUMMARY
February 27, 2020

Amendment 1 by Rep. Santiago (Line 127): The amendment revises the maximum allowable medical charges for Personal Injury Protection insurance medical coverage related to emergency services and care provided in a hospital, for both the hospital and a physician's or dentist's care and services provided in the hospital, from 75 percent of usual and customary charges to 200 percent of Medicare.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee

Representative Santiago offered the following:

Amendment (with title amendment)

Remove lines 127-130 and insert:

Section 3. Paragraph (a) of subsection (5) and subsection (10) of section 627.736, Florida Statutes, are amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) A physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may

pay for such charges directly to such person or institution lawfully rendering such treatment if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. However, such a charge may not exceed the amount the person or institution customarily charges for like services or supplies. In determining whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.

1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

a. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare.

b. For emergency services and care provided by a hospital licensed under chapter 395, 200 percent of Medicare ~~75 percent of the hospital's usual and customary charges~~.

c. For emergency services and care as defined by s.

395.002 provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, 200 percent of Medicare ~~the usual and customary charges in the community~~.

d. For hospital inpatient services, ~~other than emergency services and care,~~ 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

e. For hospital outpatient services, ~~other than emergency services and care,~~ 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I) The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III).

(II) Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.

(III) The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

2. For purposes of subparagraph 1., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the service year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies to services, supplies, or care rendered during that service year, notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B. For purposes of this subparagraph, the term "service year" means the period from March 1 through the end of February of the following year.

3. Subparagraph 1. does not allow the insurer to apply any limitation on the number of treatments or other utilization

limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 1. must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider is entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. However, subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care if the coding policy or payment methodology does not constitute a utilization limit.

4. If an insurer limits payment as authorized by subparagraph 1., the person providing such services, supplies, or care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection coverage due to the coinsurance amount or maximum policy limits.

5. An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit payment pursuant to the schedule of charges specified in this paragraph. A policy form approved by the office satisfies this requirement.

If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted.

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

Remove line 24 and insert:

s. 627.736, F.S.; revising allowable maximum medical charges; specifying information required as

PCS for HB 1165

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1165 Beverage Law
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Willson MW	Hamon K.W.H.

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.

Relating to alcoholic beverage container sizes, the bill:

- Repeals s. 564.05, F.S., relating to wine container size limitations.
- Repeals s. 564.055, F.S., relating to cider container size limitations.
- Amends s. 564.09, F.S., to clarify when an unfinished bottle of wine may be taken home by a restaurant patron.

Relating to craft distilleries, the bill:

- Clarifies that a craft distiller may blend their product with other distilled spirits.
- Increases the maximum production threshold for craft distilleries from 75,000 to 250,000 gallons.
- Authorizes the issuance of up to 3 vendor's licenses for the sale of alcoholic beverages at a craft distillery's licensed premises.
- Specifies that a craft distillery must have a vendor's license to ship its product to consumers located in Florida.
- Allows a craft distillery to sell, from its souvenir gift shop, up to 75,000 gallons of branded product per year. The craft distillery may not be licensed as a vendor, and such sales must be made in either a face-to-face transaction from the gift shop or as a shipment to a consumer located outside the state.
- Allows a craft distillery to be licensed as a distributor or exporter if the distillery is open to the public for tours, tastings, and sales at least 30 hours per week.
- Specifies that any alcoholic beverages not manufactured on-site by the distillery must be obtained through a licensed distributor, broker, agent or importer.
- Allows a craft distillery to receive a permit to conduct tastings and sales of its liquor products at fairs, trade shows, exhibitions, and festivals, subject to certain conditions.
- Authorizes a craft distillery to conduct liquor tastings anywhere that liquor may be sold.

The bill amends the Tied House Evil Law allowing certain vendors and manufacturers to enter into brand-naming rights agreements under certain conditions.

The bill authorizes certain beverage law licensees to allow dogs in certain areas under certain conditions.

The bill defines terms and establishes a framework for the return of malt beverage products that are damaged, undamaged, or out of code, including the return of product for freshness reasons. These provisions are similar to provisions in federal law and Division rules. The bill also prohibits consignment sales.

DBPR estimates there will be additional resources needed to implement the bill. The bill may have a positive fiscal impact on state revenues and for certain entities involved in the production or sale of wine, cider and distilled spirits. See *Fiscal Analysis & Economic Impact Statement.*

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law – Background

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[2]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[3]

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[4]

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters[5] are generally prohibited from holding a vendor's license.[6] Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions, subject to certain conditions, include the ability for a craft brewery to hold a vendor's license (tap room), a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.[7]

Exceptions to the three-tier regulatory system allow certain in-state wineries,[8] craft breweries,[9] and craft distilleries to sell directly to consumers.[10] Further, certain restaurants may be granted a vendor's license to manufacture a limited quantity of malt beverages which can be sold to consumers for consumption on premises.[11]

Wineries may receive up to 3 vendor's licenses on property contiguous to the manufacturing premises of the winery.[12] Section 599.004, F.S., establishes the Florida Farm Winery Program within the Department of Agriculture and Consumer Services. The requirements for certification include that a winery produce or sell less than 250,000 gallons of wine annually of which 60% is made from state agricultural products, maintain a minimum of 5 acres of owned or managed land in Florida which produces commodities used in the production of wine, be open to the public for tours, tastings, and sales at least 30 hours each week, and pay an annual application and registration fee of $100.

---

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] S. 561.02, F.S.
[3] S. 563.01, F.S.
[4] S. 561.14, F.S.
[5] S. 561.01(16), F.S. "Exporter" means any person that sells alcoholic beverages to persons for use outside the state.
[6] S. 561.22(1), F.S.; s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[7] *See* ss. 561.22, F.S.; 561.24, F.S.; 561.14(1), F.S.; and 563.022(14), F.S.
[8] *See* s. 561.221(1), F.S.
[9] *See* s. 561.221(2), F.S.
[10] *See* s. 565.03, F.S.
[11] *See* s. 561.221(3), F.S.
[12] See s. 561. 221(1), F.S.

Section 565.17, F.S., provides an exemption to the Tied-House Evil Laws, authorizing vendors and liquor distributors to conduct liquor tastings at any location that is allowed to sell liquor by the package or for consumption on premises. The tastings must be directed toward the of-age general public.

Section 561.24, F.S., prohibits the licensing of a manufacturer as a distributor or exporter. Wineries that qualify as a certified Florida Farm Winery are the sole exception to this prohibition. Additionally, the Division may issue permits for a certified Florida Farm Winery to conduct tasting and sales of its wines at Florida fairs, trade shows, expositions, and festivals. The permit is limited to the length of the event. The certified Florida Farm Winery is required to pay all entry fees and must have a winery representative present during the event.

Vendors, but not manufacturers or distributors, are allowed to make deliveries away from their place of business for sales actually made at their licensed place of business. Telephone, electronic, and mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business. Deliveries may be made in vehicles that are owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, common carriers.[13]

A craft brewery which also holds a vendor's license is specifically prohibited from making deliveries under this law.[14]

Distilleries and Craft Distilleries – Current Situation

Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean "that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

A "distillery" is a manufacturer of distilled spirits, and a "craft distillery" is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A craft distillery must notify the Division in writing of its decision to qualify as a craft distillery.[15]

A distillery engaged solely in the business of manufacturing distilled spirits, or a person engaged in the business of blending and rectifying distilled spirits must pay a state license tax of $4,000 for each plant or branch operating in Florida. The license tax for a craft distillery is $1,000. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.[16]

According to the Division, 61 of the 64 licensed distilleries operating in Florida produce less than 75,000 gallons of distilled spirits.[17]

A craft distillery is allowed to sell to consumers branded products,[18] distilled on the licensed premises, in factory-sealed containers that are filled at the distillery and sold for off-premises consumption only. The sales must occur at the distillery's souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application. Sales must be in face-to-face transactions with consumers who are making a purchase of no more than six

[13] S. 561.57(1) & (2), F.S.
[14] Ss. 561.221 (2)(d), and 565.57(1), F.S.
[15] Ss. 565.03(1)(b) & (c), F.S.
[16] S. 565.03(2)(b), F.S.
[17] Department of Business and Professional Regulation, Agency Analysis of 2020 HB 583, p. 5-6 (Dec. 6, 2019).
[18] Section 565.03(1)(a), F.S., defines "branded product" to mean "any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations."

individual containers of each branded product.[19] The craft distillery is not required to obtain a vendor's license to sell to consumers from their souvenir gift shop.

The Division must approve any subsequent revisions to a craft distillery's sketch to verify that the souvenir gift shop location operated by the craft distillery is "owned or leased by the craft distillery and on property contiguous to the craft distillery's production building."[20]

Section 565.03, F.S., imposes the following requirements and prohibitions for craft distilleries:

- A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, but may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.
- A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country. However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.
- A craft distillery must report to the Division within 5 business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.
- A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the Division.
- Containers must comply with the container limits in s. 565.10, F.S., which prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.

Distilleries and Craft Distilleries – Effect of the Bill

The bill amends s. 561.221, F.S., to:

- Authorize the issuance of up to three vendor's licenses to a craft distillery for the sale of alcoholic beverages on the distillery's licensed premises.
- Allow a craft distillery to conduct tastings and sales of their product at fairs, trade shows, expos, and festivals.

The bill also amends s. 565.17, F.S., to allow craft distilleries to conduct liquor tastings at any licensed premises authorized to sell liquor.

The bill amends s. 561.24, F.S., to allow a craft distillery to be licensed as a distributor or exporter if the craft distillery is open to the public for tours, tastings, and sales at least 30 hours a week.

The bill amends s. 565.03, F.S., to:

- Clarify the definition of "branded product" to allow craft distillers to blend their product with distilled spirits that are not manufactured on site.
- Increase the maximum production threshold for craft distilleries from 75,000 to 250,000 gallons.
- Allow a craft distillery to sell up to 75,000 gallons of branded product per year from its souvenir gift shop and removes the limitations on the number of bottles per brand per consumer that may be sold per year.
    - For sales made from the craft distillery's souvenir gift shop, the craft distillery may not be licensed as a vendor under s. 561.221, F.S., and such sales must be made in either a face-to-face transaction from the gift shop or as a shipment to a consumer located outside the state, subject to the laws of the receiving state.
- Specify that a craft distillery can transfer up to 75,000 gallons of its product from its federal bonded space, nonbonded space, or storage areas to its souvenir gift shop, per year.

---

[19] S. 565.03(1)(c), F.S.

[20] *Id.*

- Prohibit a craft distillery that does not have a vendor's license under s. 561.221, F.S., from shipping its distilled spirits to consumers located in the state.
- Remove restrictions relating to the sale, transfer, or ownership affiliation for craft distilleries.

Wine and Cider Container Limitations – Current Situation

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine, unless it is in a reusable container of 5.16 gallons, which may also be sold. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.[21]

Section 564.055, F.S., prohibits the sale of cider by vendors at retail in any individual container of more than 32 ounces. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more, regardless of container type. The Beverage Law does not provide for the sale of cider in growlers.

Wine and Cider Container Limitations – Effect of the Bill

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

The bill repeals s. 564.055, F.S., relating to the retail sale of individual cider containers.

Merlot to Go – Current Situation

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.[22]

Merlot to Go – Effect of the Bill

The bill amends s. 564.09, F.S., simplifying the requirement that a patron's meal be a "full course meal consisting of salad or vegetable, entrée, a beverage, and bread" to just "a meal."

Dogs in Bars and Restaurants – Current Situation

The Division of Hotels and Restaurants (Division) within DBPR is authorized to administer laws and rules relating to the inspection and regulation of food service establishments for the purpose of safeguarding the public health, safety and welfare, in accordance with ch. 509, F.S.[23] The law

[21] Section 775.082, F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed $500.
[22] S. 564.09, F.S.
[23] The Florida Department of Health is responsible for regulations related to food service protection and environmental health. Current regulations prohibit live animals inside food service establishments, vehicles used to transport food, and any other area or facility used to conduct food service operations. R. 64E-11.003(6)(c), F.A.C. An exception exists for service animals, as provided under s. 413.08, F.S. *See also* ss. 381.006 and 381.0072, F.S.

expressly limits the general home rule powers of a local government as it relates to the regulation of such businesses.[24]

Pursuant to its rulemaking authority, the Division has adopted the 2017 Food Code (Code) published by the U.S. Food and Drug Administration (FDA).[25] The Code prohibits live animals on the premises of food service establishments.[26] "Premises" is defined to mean the physical facility, its contents, and the contiguous land or property under the control of the permit holder.[27] There are limited exceptions to this prohibition including those for patrol dogs accompanying police or security officers, and service animals controlled by persons with disabilities.[28]

The service animal law authorizes an individual with a disability the right to be accompanied by a trained service animal (a dog) in all areas of public accommodations that the public is normally allowed to occupy.[29] A public accommodation is required to modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability.

The service animal law defines a "service animal" as an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability. A service animal is not a pet. It is also not a comfort animal.

Generally, only service animals are permitted to be inside bars and restaurants in Florida. However, Florida law allows local governments to establish a local exemption to the prohibition on having live animals inside food service establishments. Specifically, local governments may authorize local food service establishments to decide whether to designate outdoor portions of the establishment for "patrons' dogs." Participating establishments are required to apply for and receive a permit from the governing body of the local government. Local governments are authorized to include additional regulations and limitations to protect the health, safety and general welfare of the public.[30]

The local ordinances must include the following requirements:

- All public food service establishment employees must wash their hands promptly after touching, petting, or otherwise handling dogs. Employees shall be prohibited from touching, petting, or otherwise handling dogs while serving food or beverages or handling tableware or before entering other parts of the public food service establishment.
- Patrons in a designated outdoor area must be advised that they should wash their hands before eating. Waterless hand sanitizer shall be provided at all tables in the designated outdoor area.
- Employees and patrons must be instructed that dogs are prohibited from contact with serving dishes, utensils, tableware, linens, paper products, or any other items involved in food service operations;
- Patrons must keep their dogs on a leash and under reasonable control at all times;
- Dogs are prohibited on chairs, tables, or other furnishings;
- All table and chair surfaces must be cleaned and sanitized with an approved product between seating of patrons. Spilled food and drink must be removed from the floor or ground between seating of patrons;

---

[24] S. 509.032(7), F.S.

[25] U.S. Department of Health and Human Services, Public Health Service, Food & Drug Administration, *Food Code*, (2017), https://www.fda.gov/media/110822/download (last visited Jan. 8, 2019). According to the FDA, "the purpose of maintaining an updated model food code is to assist food control jurisdictions at all levels of government by providing them with a scientifically sound technical and legal basis for regulating the retail segment of the food industry."

[26] *Id.* at s. 6-501.115(A).

[27] *Id.* at s. 1-201.10(B).

[28] *Id.* at s. 6-501.115(B).

[29] S. 413.08(3), F.S.

[30] S. 509.233, F.S.

- Accidents involving dog waste must be cleaned immediately and the area sanitized with an approved product. A kit with the appropriate materials for this purpose must be kept near the designated outdoor area;
- A sign or signs reminding employees of the applicable rules must be posted on premises in a manner and place as determined by the local permitting authority;
- A sign or signs reminding patrons of the applicable rules must be posted on premises in a manner and place as determined by the local permitting authority; and
- A sign or signs must be posted in a manner and place as determined by the local permitting authority that places the public on notice that the designated outdoor area is available for the use of patrons and patrons' dogs.[31]

Regarding where dogs are allowed to travel or pass through, the local ordinances must include the following requirements:

- Dogs are prohibited from traveling through indoor portions of the public food service establishment;
- Dogs are prohibited from traveling through nondesignated outdoor portions of the public food service establishment; and
- Access to the designated outdoor portions of the public food service establishment must not require entrance into or passage through any indoor area of the food establishment.[32]

Dogs in Bars and Restaurants – Effect of the Bill

The bill creates s. 562.65, F.S., authorizing the owner of a certain premises licensed under the Beverage Law to allow dogs in designated areas, including certain indoor areas, subject to the following conditions:

- No more than 10% of gross revenues are derived from the sale of food that is consumed on the licensed premises. For the purpose of the bill, ice is not considered food.
- Dogs must be kept on a leash and under control at all times.
- Dogs are not allowed on tables, bar tops, or other furnishings.
- Dogs are not allowed in any area where food is stored or prepared.
- Dog waste must be cleaned immediately and the area sanitized.

An individual may be held liable for failure to comply with the dog-related conditions if such failure results in injury or damage. The bill also authorizes the Division to adopt rules to administer this law.

Tied House Evil – Current Situation

The three-tier system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[33]

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

Florida's Tied House Evil Law prohibits a licensed manufacturer or distributor from:

- having any direct or indirect financial interest in any vendor;
- assisting any vendor using gifts, loans, money or property of any description (except for bottles, barrels or other containers necessary for the transportation of beverages);

---

[31] S. 509.233(3)(c), F.S.

[32] *Id.*

[33] *See* Andrew Tamayo, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198 (2010), http://scholarship.law.unc.edu/nclr/vol88/iss6/6.

- giving any rebates of any kind whatsoever;
- engaging in cooperative advertising with a vendor;
- naming a vendor in any advertisement for a malt beverage tasting; and
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer. [34]

However, the Tied House Evil Law authorizes a manufacturer or distributor of malt beverage to:

- Sell, at not less than cost, **branded expendable retailer advertising specialties** to a vendor (trays, coasters, mats, menu cards, napkins, cups, glassware, thermometers, etc.).
- Lend without charge, rent, or sell **durable retailer advertising specialties** which bear advertising matter to a vendor (clocks, pool table lights, etc.).
- Sell, at not less than cost, **consumer advertising specialties** to a vendor (ashtrays, T-shirts, bottle openers, shopping bags, etc.).[35]

Additionally, a distributor of malt beverages is allowed to:

- sell, at not less than cost, draft equipment and tapping accessories to a vendor;
- exchange, or provide without charge, any parts that are not compatible with a competitor's system and are necessary to dispense the distributor's brands;
- provide, without charge, replacement parts of nominal intrinsic value (washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers, etc.); and
- provide, without charge, up to ten cases of glassware to a vendor licensed to sell malt beverages for on-premises consumption, subject to certain conditions.[36]

A vendor is prohibited from displaying any sign advertising any brand of alcoholic beverages outside of or on the outside of their establishment, and a manufacturer or distributor may not directly or indirectly give, lend, rent, sell or furnish a vendor with any outside sign. However, a vendor is allowed to display signs and other advertising materials for brands that are sold by the vendor on the interior of their licensed premises.[37]

The Division is authorized to adopt rules and require reports in order to enforce the limitations established under the Tied House Evil Law relating to credits, coupons, and other forms of assistance.[38]

Tied House Evil – Effect of the Bill

Sale or Purchase of Merchandise

The bill amends s. 561.42, F.S., to specify that a manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may not "directly or indirectly" assist any vendor by "furnishing, supplying, selling, renting, lending, buying for, or giving to any vendor any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees,

---

[34] S. 561.42, F.S.

[35] S. 561.42(14), F.S.

[36] *Id.* Specifically, a distributor that receives glassware at no charge on a no-charge invoice from a malt beverage manufacturer or importer may give such glassware to a vendor licensed to sell malt beverages for on-premises consumption. Each piece of glassware given to a vendor by a distributor must bear a permanent brand name intended to prominently advertise the brand. A distributor may not give a vendor more than 10 cases of glassware per calendar year per licensed premises. A vendor that receives a gift of glassware from a distributor may not sell the glassware or return it to a distributor for cash, credit, or replacement. A manufacturer or importer who sells or gives glassware to a distributor, a distributor who sells or gives glassware to a vendor, and such vendor, must maintain records of such sale or gift of glassware.

[37] S. 561.42(10)-(12), F.S. However, only one neon, electric, or similar sign per manufacturer may be displayed in a window.

[38] S. 561.42(8), F.S.

slotting fees of any kind, advertising or cooperative advertising, or services" unless the manufacturer, distributor, etc., "regularly sells merchandise to vendors" and the sale or purchase is:

- equal to or greater than the fair market value of the merchandise;
- not combined with any sale or purchase of alcoholic beverages;
- separately itemized from the sale or purchase of alcoholic beverages; and
- both the seller and purchaser maintain records.

The bill defines the term "merchandise" as commodities, supplies, fixtures, furniture, or equipment. The term does not include alcoholic beverages or a motor vehicle or trailer requiring registration under ch. 320, F.S.

Written Agreements for Brand-Naming Rights and Associated Cooperative Advertising

The bill provides that, notwithstanding any other provision of the Tied House Evil Law, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising if:

- The agreement is negotiated at arm's length for no more than fair market value;
- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit;
- The agreement does not involve the sale or distribution of malt beverages;
- The vendor does not give preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages of another manufacturer, importer or distributor; and
- Within 10 days after execution of the agreement, the vendor files with the division a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill prohibits a manufacturer or importer from soliciting or receiving, and prohibits a distributor from paying, any portion of the brand-naming rights or cooperative advertising agreement. The bill also specifies that such an agreement may not in any way obligate or place responsibility, financial or otherwise, on a distributor.

The bill defines "negotiated at arm's length" as the negotiation of a business transaction by independent parties acting in each party's own individual self-interest and conducted as if the parties were strangers, so that no conflict of interest may arise.

The bill provides that a manufacturer, importer or vendor that violates the written agreement for brand-naming rights and associated cooperative advertising provisions is subject to:

- First violation: A civil penalty up to $25,000 or the financial value of the brand-naming rights agreement, whichever is greater.
- Second violation: A civil penalty up to $100,000 or the financial value of the brand-naming rights agreement, whichever is greater.
- At the discretion of the division, in lieu of or in addition to the second civil penalty, suspension or revocation of the alcoholic beverage license for a third or subsequent violation occurring within 36 months after the date of the first violation.

The bill provides that a violation occurring more than 36 months after a first violation is deemed a first violation.

Return of Malt Beverages – Current Situation

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors. Additionally, s. 563.022(4), F.S., prohibits unfair methods of competition and unfair or deceptive practices in the conduct of the manufacturing, importing, distribution, sale, wholesaling, and franchising of beer.

Product Returns – Federal Law

Federal regulations prohibit the sale or purchase of any alcoholic beverage products on consignment, under conditional sale, with privilege of return, on any basis other than a bona fide sale, or if the sale involves an agreement to acquire other products.[39] However, transactions involving the bona fide return of products for "ordinary and usual commercial reasons arising after the merchandise has been sold" are not prohibited.[40] Under federal regulations, ordinary and usual commercial reasons include:

- Defective product,
- Shipment error,
- A change in law preventing the sale of the product,
- Termination of the buyer's business,
- Change in product from that in inventory,
- Product in inventory is discontinued, or
- Possible spoilage of product during the offseason of a seasonal retail dealer.[41]

Such returns are optional. The distributor is not required to accept the return.[42] Returns or exchanges of products that are merely overstocked, slow-moving, or seasonal in nature are not considered ordinary and usual commercial reasons.[43]

Freshness Dating

Some brewers assign a coded "pull date" or "freshness date" to their product as a quality control tool to prevent stale or outdated product from remaining in the marketplace.[44] Federal regulations allow for the return (exchange, refund or credit) of malt beverages for freshness reasons under the following circumstances:

- The brewer has policies and procedures in place that specify the date the retailer must pull the product.
- The policies and procedures are readily verifiable and consistently followed by the brewer.
- The container has identifying markings that correspond with this date.
- The malt beverage product pulled by the distributor or retailer may not re-enter the retail marketplace.
- If the product is returned for exchange, it must be for an identical quantity of the same brand.[45]

Federal regulation prohibits the use of freshness provisions as "mere subterfuge to violate these same consignment sales and/or tied house provisions."[46]

---

[39] 27 U.S.C. § 205(d).
[40] *Id.*
[41] 27 C.F.R.§§ 11.32–11.39.
[42] Alcohol and Tobacco Tax and Trade Bureau (TTB) Ruling, *2017-2 Revised – Freshness Dating and Allowable Returns of Malt Beverage Products under the FAA Act* (Sept. 29, 2017). In the case of malt beverages, trade practice provisions of the Federal Alcohol Administration Act (FAA Act) apply only if the laws of the state into which the malt beverage products are sold or shipped impose similar requirements.
[43] *Id.; 27 C.F.R.* § 11.45 & 11.46.
[44] *Id.*
[45] *Id.*
[46] *Id.*

Product Returns – Division Rules

The Beverage Law does not explicitly regulate the return of malt beverage products to distributors by vendors. However, the Division has adopted rules to provide guidance to the industry.

Return of Damaged Products

Rule 61A-1.0107, F.A.C., regulates the return of damaged products. Products are considered damaged if they, through no fault of the vendor or customer, exhibit product deterioration, leaking containers, damaged labels, or missing or mutilated tamper-evident closures. Damaged products can be returned for exchange, cash, or a credit when the vendor makes the request within 15 days of delivery. Distributors are required to keep detailed transaction records of such returns.[47]

If the vendor does not make the return request within 15 days of delivery, damaged product may not be returned unless:

- The product is part of a manufacturer recall that affects multiple unaffiliated vendors; or
- Through no fault of the vendor, the product has deteriorated due to manufacturing or packaging problems.

Return of Undamaged Products

Rule 61A-1.0108, F.A.C., regulates the return of undamaged products. A vendor may receive cash or credit for the return of undamaged product if the request is made within 10 days of delivery. Distributors are required to keep detailed transaction records of such returns.

If the vendor does not make the request within 10 days of delivery, undamaged product may not be returned unless:

- The product may no longer be lawfully sold.
- The vendor goes out of business.
- There is a change in product, such as a change in formula, proof, label, or container.
- The product is discontinued; or
- The vendor is only open for a portion of the year, and the remaining product will spoil in the off-season.[48]

Additionally, distributors are prohibited from making consignment sales to vendors, and vendors may not attempt to return or exchange overstocked or slow-moving product.[49]

Violations and Penalties

Section 562.45(1), F.S., provides that the false entry of any record required under the Beverage Law or violation of the excise tax provisions, when done intentionally, is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S. For violations of the Beverage Law where no penalty is provided, first-time offenses are guilty of a misdemeanor of the second degree and a felony of the third degree for any subsequent offenses thereafter.

Section 561.29, F.S., authorizes the Division to issue civil penalties for violations of the Beverage Law and rules issued thereto. Such penalties may not exceed $1,000 per transaction. The Division is also authorized to suspend the license of a licensee that fails to pay a civil penalty.

---

[47] Section 561.55(3)(a), F.S., requires a manufacturer, distributor, broker, agent, and importer licensed under the Beverage Law to maintain and keep, for a period of three years at the licensed place of business, such records of alcoholic beverages received, sold, or delivered within or without this state as may be required by the Division

[48] R. 61A-1.0108(4), F.A.C.

[49] *Id.*

Return of Malt Beverages – Effect of the Bill

The bill creates s. 563.061, F.S., relating to the return of malt beverage products.

Consignment Sales Prohibited

The bill prohibits the sale of malt beverages on consignment or any other basis other than a "bona fide sale." Once a sale is made, only "bona fide returns" are allowed for the "ordinary and usual commercial reasons" authorized in the bill. The terms "bona fide sale" and "bona fide return" are not defined in the bill. The bill also specifies that product may not be returned simply because it is overstocked, slow-moving, or has limited or seasonal demand, such as holiday decanters or other specialized containers.

Product Returns

The bill outlines situations where a vendor is permitted to return product for an exchange, a credit, or a refund. The bill does not condition the return of product for a credit or a refund, but product returned for an exchange may only be exchanged for:

- the exact same quantity of product,
- of near or equal value,
- made by the same manufacturer, and
- in the same size container or keg.

Return of Undamaged Product

The bill defines "undamaged product" as malt beverage product that is not damaged or out of code. Undamaged product may be returned for exchange or credit. The vendor must make their return request within 7 days of delivery. However, there is no time frame for a distributor to accept the return of undamaged product if:

- Due to a change in regulations, the vendor is no longer permitted to sell a particular brand or product size. (For credit or refund.[50])
- The vendor terminates operations. (For credit or refund.)
- The product is returned for "purposes of ensuring quality control or freshness" even if it is not yet out of code. (For exchange only.)
- A manufacturer issues a recall affecting multiple vendors that are not: under common ownership, members of the same pool buying group, or members of the same advertising cooperative. (For exchange or credit.)
- Production or importation of the product is discontinued. (For credit or refund.)
- The vendor is only open for part of the year, and the inventory at closing would go bad before the vendor reopens. (For credit or refund.)

When undamaged product is returned more than 7 days after delivery, documentation of the qualifying exception must be kept with the transaction record maintained by the distributor.

Return of Damaged Product

The bill defines "damaged product" to mean a malt beverage product delivered to a vendor exhibiting product deterioration, defective seals, leaking, damaged labels, or missing or mutilated tamper-evident closures. The bill establishes the following guidelines for damaged product:

- Return requests must be made within 7 days of delivery.
- The distributor must verify that the product is damaged.
- Product that is damaged by the vendor or their customers may not be returned.
- Damaged product may be returned for exchange of product or credit.

[50] Type of return allowed is indicated in parentheses.

Return of Out-of-Code Product

The bill defines "out-of-code product" as malt beverages that have exceeded the manufacturer's code date and, according to the manufacturer's policies, must be removed and replaced with fresh product for purchase in the retail market.

The bill defines "manufacturer's code date" to mean a coded best-by date, expiration date, or other designated date or dating system established by a manufacturer to signify freshness that is printed on the malt beverage container or, in the case of a keg, marked on a cap, collar, tag, or label affixed directly to the keg.

A distributor may accept out-of-code product if:

- The distributor verifies that the product is out-of-code.
- The manufacturer has established written guidelines relating to product removal.
- Such policies and procedures are readily available, verifiable, and consistently applied by the manufacturer.
- The manufacturer's code date is printed or marked on the product container.
- The out-of-code product that is removed by the distributor does not reenter the retail market.

Out-of-code product may be returned for exchange only.

Distributor Requirements

The bill authorizes, but does not require, distributors to accept returns. When a distributor does accept a return, the distributor is required to:

- Provide the exchange, credit, or refund to the vendor at the time the product is picked up.
- Pick up damaged or undamaged product within 14 days of a vendor's return request.
- The bill does not specify when a distributor must pick up product that is out-of-code.

The bill requires distributors to maintain detailed transaction records for returned product for 3 years and provide a copy to the vendor.

Additional Provisions

The bill specifies that, for the purposes of the Tied-House Evil Law, authorized returns are not considered gifts, loans, or any other form of prohibited financial aid or assistance. The bill authorizes the Division to impose a fine of up to $1,000 for each violation. The bill authorizes the Division to adopt rules to administer and enforce the provisions.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1 Amends s. 561.221, F.S.; authorizing the division to issue vendor's licenses to certain craft distilleries for the sale of alcoholic beverages on the distillery's licensed premises; requiring certain information be included on sketches approved by the division; requiring the division to issue permits to craft distilleries for conducting tastings and sales at certain events; requiring craft distilleries to pay entry fees for such events and have a representative of the distillery present at each event; requiring that certain alcoholic beverages be obtained through a licensed distributor, a licensed broker or sales agent, or a licensed importer.

Section 2 Amends s. 561.24, F.S., authorizing a craft distillery to be licensed as a distributor under certain circumstances.

Section 3 Amends s. 561.42, F.S., revising terms; creating exemptions and penalties relating to the Tied House Evil Law.

Section 4 Creates s. 562.65, F.S.; providing definitions; authorizing certain licensed vendors of alcoholic beverages to allow dogs in certain designated areas on licensed premises; providing requirements; providing for liability; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to adopt rules.

Section 5 Creates s. 563.061, F.S.; providing definitions; prohibiting consignment sales of malt beverages between a distributor and vendor; authorizing bona fide returns of malt beverages under certain conditions; providing applicability; authorizing distributors to accept returns of certain products under specified conditions; providing distributor requirements for such returns; providing requirements for exchanges of product; providing recordkeeping requirements; specifying that authorized returns are not gifts, loans, or other prohibited forms of financial aid or assistance; providing penalties; and providing for rulemaking.

Section 6 Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 7 Repeals s. 564.055, F.S., relating to limitations on the size of individual cider containers.

Section 8 Amends s. 564.09, F.S., revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from a restaurant for off-premises consumption.

Section 9 Amends s. 565.03, F.S.; redefining the terms "branded product" and "craft distillery"; revising the requirements for the sale of branded products by a licensed craft distillery to consumers; deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; etc.

Section 10 Amends s. 565.17, F.S., authorizing a craft distillery to conduct spirituous beverage tastings on specified licensed premises under certain circumstances.

Section 11 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may result in an insignificant positive fiscal impact from revenue generated by craft distilleries obtaining up to three vendor's licenses. The bill authorizes DBPR to impose and collect fines, not to exceed $1,000, relating to the return of malt beverages.

   The bill provides for an indeterminate positive fiscal impact through the creation of new civil penalties as listed in the Tied House Evil section, above.

2. Expenditures:

   To implement the bill, the Division estimates the need for two additional Tax Auditor positions for a total of $143,875 in the first year and $131,925 recurring thereafter.[51]

[51] Department of Business and Professional Regulation, Agency Analysis of 2020 HB 1165, p. 6 (Jan. 30, 2020).

However, currently there are 2 Tax Auditor positions within DBPR that are vacant over 300 days. These positions could be transferred to the Division to address the requirements of the bill.[52]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on certain entities in the wine and cider industry, due to the reduction or elimination of regulatory constraints relating to container sizes.

The bill may have a positive economic impact for many craft distilleries, due to the removal of many current regulatory constraints, resulting in enhanced brand recognition, increased sales volume, opportunities for collaboration, and access to new markets and consumers.

Manufacturers and importers of malt beverages and qualified vendors will no longer be prohibited from entering into agreements for brand naming rights under certain circumstances. This relaxation of the Tied House Evil Law may allow certain licensees to benefit financially while negatively impacting other licensees.

For some manufacturers and distributors, the bill may have a positive economic impact due to an increase in consumer sales, stemming from the ability to move product between vendors for "freshness" purposes. For other manufacturers and distributors, the bill may have a negative economic impact to the extent that their brands become less attractive to vendors as compared to brands for which there is a freshness policy. For vendors, the bill may have a positive economic impact for those with difficult to sell inventory, and may have a negative impact to the extent that the narrowing of the window for returns and the addition of a freshness policy affects a vendor's ability to return or sell certain products

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Division of Alcoholic Beverages and Tobacco to adopt rules to administer the provisions of the bill.

[52] Department Vacancy Report, Jan. 30, 2020, on file with the Government Operations and Technology Appropriations Subcommittee.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating the Beverage Law; amending s. 561.221, F.S.; authorizing the division to issue vendor's licenses to certain craft distilleries for the sale of alcoholic beverages on the distillery's licensed premises; requiring that the licensed vendor premises be included on certain sketches and diagrams under certain circumstances; requiring that all revisions to sketches or diagrams be approved by the division; requiring the division to issue permits to craft distilleries for conducting tastings and sales at certain events; requiring craft distilleries to pay entry fees for such events and have a representative of the distillery present at each event; requiring that certain alcoholic beverages be obtained through a licensed distributor, a licensed broker or sales agent, or a licensed importer; amending s. 561.24, F.S.; authorizing a craft distillery to be licensed as a distributor under certain circumstances; amending s. 561.42, F.S.; prohibiting certain entities and persons from directly or indirectly assisting or providing specified items, monies, or services to a licensed vendor; prohibiting a licensed vendor from accepting specified items, monies, or services from certain entities or persons; authorizing the Division of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Alcoholic Beverages and Tobacco adopt rules and require reports to enforce, and to impose administrative sanctions for a violation of limitations established under the Beverage Law on specified items, monies, or services; prohibiting a vendor from displaying certain signs in the window or windows of his or her licensed premises; authorizing certain entities and persons to furnish, supply, sell, rent, lend, or give certain advertising material to certain vendors; defining the term "decalcomania"; providing exemptions relating to tied house evil for certain sales and purchases of merchandise; providing conditions for the exemptions; defining the term "merchandise"; prohibiting the sale of certain advertising specialties at a price higher than the actual cost to the industry member; authorizing a manufacturer or importer of malt beverages and a vendor to enter into a written agreement for certain purposes; providing requirements for such agreement; defining the term "negotiated at arm's length"; specifying that a brand-naming rights agreement does not obligate or place responsibility upon a distributor; providing civil penalties; prohibiting the division from imposing certain civil penalties; creating s. 562.65, F.S.; providing definitions;

authorizing certain licensed vendors of alcoholic beverages to allow dogs in certain designated areas on licensed premises; providing requirements; providing for liability; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to adopt rules; creating s. 563.061, F.S.; providing definitions; prohibiting consignment sales of malt beverages between a distributor and vendor; authorizing bona fide returns of malt beverages under certain conditions; providing applicability; authorizing distributors to accept returns of certain products under specified conditions; providing distributor requirements for such returns; providing requirements for exchanges of product; providing recordkeeping requirements; specifying that authorized returns are not gifts, loans, or other prohibited forms of financial aid or assistance; providing penalties; providing for rulemaking; repealing ss. 564.05 and 564.055, F.S., relating to limitations on the size of individual wine containers and individual cider containers; amending s. 564.09, F.S.; revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from the restaurant for off-premises consumption; amending s. 565.03, F.S.;

redefining the terms "branded product" and "craft distillery"; revising the requirements for the sale of branded products by a licensed craft distillery to consumers; deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; revising requirements relating to the shipping of distilled spirits to consumers by a craft distillery; deleting requirements relating to the transfer of certain distillery licenses and ownership therein; deleting a prohibition against certain affiliations; authorizing a craft distillery to transfer specified quantities of specified distilled spirits from certain locations to its souvenir gift shop; requiring a craft distillery making such transfers to submit certain excise taxes with its monthly report to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation; amending s. 565.17, F.S.; authorizing a craft distillery to conduct spirituous beverage tastings on specified licensed premises under certain circumstances; providing an effective date.

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

Section 1. Subsection (4) is added to section 561.221, Florida Statutes, to read:

561.221 Licensing of manufacturers and distributors as vendors and of vendors as manufacturers; conditions and limitations.—

(4)(a) Notwithstanding s. 561.22, s. 561.42, or any other provision of the Beverage Law, the division may issue up to three vendor's licenses to a craft distillery licensed under s. 565.03, even if such distillery is also licensed as a distributor, for the sale of alcoholic beverages on a craft distillery's licensed premises.

(b) If a vendor's license is for the sale of alcoholic beverages on a craft distillery's licensed premises, the licensed vendor premises must be included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the craft distillery must be approved by the division and must verify that the vendor premises operated by the licensed distillery is owned or leased by the craft distillery and is located on the licensed distillery premises.

(c) The division shall, upon request, issue permits to a craft distillery to conduct tastings and sales of distilled spirits produced by the distillery at fairs, trade shows, expositions, and festivals in this state. The craft distillery shall pay all entry fees for such events and shall have a

representative present during each event. A permit is limited to the length of the event for which the permit is issued.

(d) Distilled spirits and other alcoholic beverages manufactured by another licensed manufacturer, including any distilled spirits that are owned in whole or in part by the craft distillery but are distilled by another manufacturer, must be obtained through a licensed distributor, a licensed broker or sales agent, or a licensed importer.

Section 2. Subsection (9) is added to section 561.24, Florida Statutes, to read:

561.24 Licensing manufacturers as distributors or registered exporters prohibited; procedure for issuance and renewal of distributors' licenses and exporters' registrations.—

(9) This section does not apply to a craft distillery, as defined in s. 565.03, which is open to the public for tours, tastings, and sales at least 30 hours each week.

Section 3. Subsections (13) and (14) of section 561.42, Florida Statutes, are renumbered as subsections (14) and (15), respectively, subsections (1), (8), (11), and (12) and paragraph (b) of present subsection (14) are amended, and new subsections (13) and (16) are added to that section, to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for

enforcement; exception.—

(1) A ~~No~~ manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, or ~~nor~~ any broker, sales agent, or sales person thereof, may not ~~shall~~ have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor may ~~shall~~ such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof, directly or indirectly, assist any vendor by furnishing, supplying, selling, renting, lending, buying for, or giving to any vendor any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, ~~any~~ gifts or loans of money or property of any description, or ~~by the giving of any~~ rebates of any kind whatsoever. A ~~No~~ licensed vendor may not ~~shall~~ accept, directly or indirectly, any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, gifts ~~any gift~~ or loans ~~loan~~ of money or property of any description, or ~~any~~ rebates of any kind whatsoever from any such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any

broker, sales agent, or sales person thereof; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with ~~the provisions of~~ this section. A brand owner is a person who is not a manufacturer, distributor, importer, primary American source of supply, brand registrant, or broker, sales agent, or sales person thereof, but who directly or indirectly owns or controls any brand, brand name, or label of alcoholic beverage. ~~Nothing in~~ This section does not ~~shall~~ prohibit the ownership by vendors of any brand, brand name, or label of alcoholic beverage.

(8) The division may adopt rules and require reports to enforce, and may impose administrative sanctions for any violation of, the limitations established under the Beverage Law on any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, gifts or loans of money or property of any description, rebates of any kind whatsoever ~~in this section on credits~~, coupons, and other forms of assistance.

(11) A vendor may display in the interior of his or her licensed premises, including the window or windows thereof, neon, electric, or other signs that require a power source;~~,~~ ~~including~~ window painting and decalcomanias applied to the

surface of the interior or exterior of such windows;~~,~~ and posters, placards, and other advertising material advertising the brand or brands of alcoholic beverages sold by him or her, whether visible or not from the outside of the licensed premises. However, a~~, but no~~ vendor may not ~~shall~~ display in the window or windows of his or her licensed premises more than one neon, electric, or similar sign that requires a power source~~,~~ advertising the product of any one brand of alcoholic beverage ~~manufacturer~~.

(12) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may give, lend, furnish, or sell to a vendor who sells the products of such manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant any of the following: neon, ~~or~~ electric, or other signs requiring a power source; ~~signs,~~ window painting and decalcomanias applied to the surface of the interior or exterior of windows; and~~,~~ posters, placards, and other advertising material ~~herein~~ authorized to be used or displayed by the vendor in the interior of his or her licensed premises. As used in this section, the term "decalcomania" means a picture, design, print, engraving, or label made to be transferred onto a glass surface.

(13) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

broker, sales agent, or sales person thereof, who regularly sells merchandise to vendors, or any vendor who purchases merchandise from such manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, does not violate subsection (1) if:

(a) Such sale or purchase is equal to or greater than the fair market value of the merchandise; not combined with any sale or purchase of alcoholic beverages; separately itemized from the sale or purchase of alcoholic beverages; and

(b) Both the seller and purchaser maintain records of any such sale or purchase, including the price and any conditions associated with such sale or purchase of the merchandise.

For purposes of this subsection, the term "merchandise" means commodities, supplies, fixtures, furniture, or equipment. The term does not include alcoholic beverages or a motor vehicle or trailer requiring registration under chapter 320.

(15) ~~(14)~~ The division shall adopt reasonable rules governing promotional displays and advertising. Such rules may not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any broker, sales agent, or sales person

thereof; however:

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, primary American source of supply, or brand owner~~,~~ or ~~brand~~ registrant of malt beverage, or any broker, sales agent, or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter. If sold, such items may not be sold at a price less than the actual cost to the industry member who initially purchased the items.

(16)(a) Notwithstanding other provisions of this section, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising, negotiated at arm's length, for no more than fair market value if all of the following conditions are met:

1. The vendor operates places of business where consumption on the premises is permitted and the premises:

a. Are located within a theme park complex consisting of at least 25 contiguous acres owned and controlled by the same business entity;

b. Contain permanent exhibitions and a variety of recreational activities; and

c. Has a minimum of 1 million visitors annually with a

controlled entrance to, and exit from, the enclosed area.

2. Such agreement does not involve, either in whole or in part, the sale or distribution of malt beverages between the manufacturer or importer, or the manufacturer's or importer's distributor, and a vendor.

3. The vendor, as a result of such agreement, does not give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer with whom the vendor has entered into such agreement.

4. Such agreement does not directly or indirectly limit the sale of alcoholic beverages of another manufacturer or importer, or distributor.

5. Within 10 days after execution of such agreement, the vendor files with the division a description of the agreement which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

As used in this paragraph, the term "negotiated at arm's length" means the negotiation of a business transaction by independent parties acting in each party's own individual self-interest and conducted as if the parties were strangers, so that no conflict of interest may arise.

(b) A manufacturer or importer of malt beverages who is a party to a brand-naming rights agreement may not, directly or indirectly, solicit or receive from any of its distributors any

portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to such agreement. Such agreement exists solely between the manufacturer and the vendor and does not, directly or indirectly, in any way obligate or place responsibility, financial or otherwise, upon a distributor.

(c) Notwithstanding s. 561.29(3) and (4), a manufacturer of malt beverages, an importer of malt beverages, or a vendor who violates this subsection is subject to:

1. A civil penalty of not more than $25,000, for a first violation.

2. A civil penalty of not more than $100,000 for a second violation occurring within 36 months after the date of the first violation.

3. At the discretion of the division, in lieu of or in addition to the penalty imposed under subparagraph 2., suspension or revocation of the alcoholic beverage license for a third or subsequent violation occurring within 36 months after the date of the first violation.

A violation occurring more than 36 months after a first violation is deemed a first violation under this paragraph. When imposing a civil penalty within the ranges provided in subparagraphs 1. and 2., the division may not impose a civil penalty in an amount greater than the financial value of the

brand-naming rights agreement.

Section 4. Section 562.65, Florida Statutes, is created to read:

562.65 Licensed premises of vendors; dogs allowed in designated areas.—

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

(a) "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(b) "Dog" means a dog that is domesticated and kept as a household pet.

(c) "Licensed premises" has the same meaning as provided in s. 561.01(11).

(d) "Vendor" means a person who is licensed under the Beverage Law.

(2) A vendor may allow dogs in designated areas, including certain indoor areas, of the licensed premises under the following conditions:

(a) No more than 10 percent of the gross revenue of the vendor's business may be from the sale of food consumed on the licensed premises. Ice may not be considered food.

(b) Dogs must be kept on a leash and under control at all times.

(c) Dogs may not be permitted on tables, bar tops, or other furnishings.

(d) Dogs may not be permitted in any area of the licensed premises in which food is stored or prepared.

(e) Dog waste must be cleaned immediately and the area must be sanitized.

(3) An individual may be held liable for failure to comply with the conditions under paragraphs (2)(b)-(e) if such failure causes injury or damage.

(4) The division may adopt rules to administer this section.

Section 5. Section 563.061, Florida Statutes, is created to read:

563.061 Return of malt beverage products.—

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

(a) "Damaged product" means a malt beverage product delivered to a vendor exhibiting product deterioration, defective seals, leaking, damaged labels, or missing or mutilated tamper-evident closures.

(b) "Keg" means a reusable container used to store and dispense a malt beverage product in draft form on tap.

(c) "Manufacturer's code date" means a coded best-by date, expiration date, or other designated date or dating system established by a manufacturer to signify freshness that is printed on the malt beverage container or, in the case of a keg, marked on a cap, collar, tag, or label affixed directly to the keg.

(d) "Out-of-code product" means a malt beverage product that has exceeded the manufacturer's code date and, according to the manufacturer's policies, must be removed and replaced with fresh product for purchase in the retail market.

(e) "Undamaged product" means a malt beverage product that is not damaged or out of code.

(2) CONSIGNMENT SALES PROHIBITED; AUTHORIZED RETURNS.—A distributor may not sell, offer for sale, or contract to sell malt beverages on consignment or any basis other than a bona fide sale. A vendor may not purchase, offer to purchase, or contract to purchase malt beverages on consignment or any basis other than a bona fide sale. Once a distributor sells malt beverages to a vendor, only bona fide returns are permitted for the ordinary and usual commercial reasons authorized in this section. This section does not permit return of product because it is overstocked or slow-moving or because it has limited or seasonal demand, including, but not limited to, product packaged in holiday decanters or distinctive bottles.

(3) RETURNS OF UNDAMAGED PRODUCT.—

(a) Except as provided in paragraph (b), undamaged product may be returned for exchange of product or credit.

(b) A distributor may only accept a return of undamaged product if the return is requested within 7 days after the delivery date. However, a distributor may accept a return of

undamaged product after such time in the following circumstances:

1. If a vendor or its employees or agents are no longer permitted, due to a change in regulation or administrative procedure, to sell a particular brand or size product, such product may be returned for credit or refund.

2. If a vendor terminates operations, the vendor's inventory of product at the time of termination may be returned for credit or refund. This subparagraph does not apply during a vendor's temporary seasonal shutdown.

3. Except as provided in subparagraph 6., a product that has not yet exceeded the manufacturer's code date may be returned for purposes of ensuring quality control or freshness; however, such product may only be returned for exchange of product.

4. If a manufacturer has issued a product recall that affects multiple vendors that are not affiliated through having common ownership, being members of the same pool buying group, or being members of the same advertising cooperative, the recalled product may be returned for exchange of product or credit. If return of such product is requested more than 7 days after the delivery date, the distributor must keep documentation of the recall with the transaction record maintained pursuant to subsection (8).

5. If production or importation of a product is discontinued, a vendor's inventory of the discontinued product may be returned for credit or refund.

6. If a vendor is only open for a portion of the year and has product remaining at closure which, with respect to quality control or freshness, would become unsuitable for sale during the off-season according to the manufacturer's code date, such product may be returned for credit or refund.

If undamaged product is returned under this paragraph, the distributor must keep documentation of a qualifying exception in subparagraphs 1.-6. with the transaction record maintained pursuant to subsection (8).

(4) RETURNS OF DAMAGED PRODUCT.—

(a) Damaged product may only be returned for exchange of product or credit. A distributor must verify damaged product before accepting its return.

(b) Product damaged by a vendor, its employees or agents, or its customers may not be returned and shall be the vendor's liability.

(c) A distributor may only accept return of damaged product if requested within 7 days after the delivery date.

(5) RETURNS OF OUT-OF-CODE PRODUCT.—

(a) Out-of-code product may only be returned for exchange of product. A distributor must verify out-of-code product before accepting its return.

(b) A distributor may accept return of out-of-code product any time after the manufacturer's code date only in the following circumstances:

1. The manufacturer has written policies and procedures that specify the date that out-of-code product should be removed.

2. Such policies and procedures are readily available, verifiable, and consistently applied by the manufacturer.

3. The manufacturer's code date is printed on the product container or, in the case of a keg, marked on a cap, collar, tag, or label affixed directly to the keg.

4. Out-of-code product removed by the distributor does not reenter the retail market.

(6) EXCHANGES OF PRODUCT.—An exchange of product authorized under this section must be in exact quantities with a product of near or equal value, made by the same manufacturer, and in the same size container or keg unless a credit is issued at the time of the return.

(7) DISTRIBUTOR REQUIREMENTS FOR RETURNS.—This section does not require a distributor to accept returns authorized under this section; however, if a distributor accepts return of product, the distributor must:

(a) Provide the exchange of product, credit, or refund to the vendor, as provided in subsections (3)-(5), at the same time the distributor picks up the product being returned.

(b) For damaged or undamaged product, pick up the product being returned within 14 days after receipt of the vendor's request.

(8) TRANSACTION RECORDS.—A distributor must keep and maintain for 3 years a transaction record of each return identifying the vendor's business name, address, and license number; product returned for exchange of product, credit, or refund; and any other documentation required by this section. The distributor must provide a copy of the transaction record to the vendor in a format accessible and readable by the vendor. Such transaction records must be maintained on the distributor's licensed premises, or may be kept at another location in this state if the distributor notifies the division in writing before keeping records in another location, and must be made available to the division upon request for inspection in a format accessible and readable by the division. The distributor must notify the division in writing of any change in recordkeeping location.

(9) RETURNS NOT TIED HOUSE EVIL.—Bona fide returns authorized under this section for exchange of product, credit, or refund are not considered gifts, loans, or other forms of financial aid or assistance prohibited by s. 561.42.

(10) CIVIL PENALTY.—In accordance with s. 561.29, the division may impose a civil penalty against a distributor or vendor for any violation of this section, or any rule adopted under this section, not to exceed $1,000 per violation.

(11) RULEMAKING AUTHORITY.—The division may adopt rules to administer and enforce this section.

Section 6. Section 564.05, Florida Statutes, is repealed.

Section 7. Section 564.055, Florida Statutes, is repealed.

Section 8. Section 564.09, Florida Statutes, is amended to read:

564.09 Restaurants; off-premises consumption of wine.—Notwithstanding any other provision of law, a restaurant licensed to sell wine on the premises may permit a patron to remove one unsealed bottle of wine for consumption off the premises if the patron has purchased a ~~full course~~ meal ~~consisting of a salad or vegetable, entree, a beverage, and bread~~ and consumed a portion of the bottle of wine ~~with such meal~~ on the restaurant premises. A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and ~~full course~~ meal shall be provided by the

licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine must be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

Section 9. Paragraphs (a) and (b) of subsection (1), paragraphs (b) and (c) of subsection (2), and subsection (5) of section 565.03, Florida Statutes, are amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; distilleries and craft distilleries.—

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

(a) "Branded product" means any distilled spirits product manufactured on site, or manufactured on site and blended on site with other distilled spirits, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.

(b) "Craft distillery" means a licensed distillery that produces 250,000 ~~75,000~~ or fewer gallons per calendar year of distilled spirits on its premises and is designated as a craft distillery by ~~has notified~~ the division upon notification in writing of its decision to qualify as a craft distillery.

(2)

(b) A licensed distillery or craft distillery may ~~Persons licensed under this section who are in the business of~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

V

~~distilling spirituous liquors may also~~ engage in the business of rectifying and blending spirituous liquors without the payment of an additional license tax.

(c) A craft distillery licensed under this section which is not licensed as a vendor under s. 561.221 may sell to consumers under its craft distillery license, at its souvenir gift shop, up to 75,000 gallons per calendar year of branded products ~~distilled on its premises in this state~~ in factory-sealed containers that are filled at the distillery for off-premises consumption by consumers. Such sales are authorized only on ~~private~~ property owned or leased by the craft distillery which is contiguous to the craft distillery's licensed ~~distillery~~ premises approved by the division ~~in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state~~.

1. A craft distillery may not sell under its craft distillery license any factory-sealed individual containers of spirits to consumers in this state except in face-to-face sales transactions with such consumers at the craft distillery's licensed premises. Such containers must be in compliance with

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

the container limits in s. 565.10 ~~who are making a purchase of no more than six individual containers of each branded product~~.

~~2. Each container sold in face-to-face transactions with consumers must comply with the container limits in s. 565.10, per calendar year for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.~~

2.~~3.~~ A craft distillery must report to the division within 5 days after it reaches the production limitations provided in paragraph (1)(b). Any retail sales to consumers under its craft distillery license ~~at the craft distillery's licensed premises~~ are prohibited beginning the day after it reaches the production limitation.

3.~~4.~~ A craft distillery that has not been issued a vendor's license under s. 561.221 may not ship or arrange to ship any of its distilled spirits to consumers in this state and may sell and deliver only to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distillery ~~distiller~~ licensed under this section may ship, arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, ~~and~~ exporters, or consumers located outside of this state; however, all such shipments must comply with the laws where such products are scheduled to be delivered for personal use.

4. A craft distillery may transfer up to 75,000 gallons per calendar year of distilled spirits that it manufactures from its federal bonded space, nonbonded space at its licensed premises, or storage areas to its souvenir gift shop.

~~5. Except as provided in subparagraph 6., it is unlawful to transfer a distillery license for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.~~

~~6. A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.~~

(5) A craft distillery may transfer distilled spirits to any of its retail areas pursuant to paragraph (2)(c) or s. 561.221 and ~~making sales under paragraph (2)(c)~~ is responsible for submitting any excise taxes due to the state on distilled spirits ~~on beverages~~ under the Beverage Law with ~~in~~ its monthly report to the division ~~with any tax payments due to the state~~.

Section 10. Section 565.17, Florida Statutes, is amended

to read:

565.17 Beverage tastings by distributors, craft distilleries, and vendors.—A licensed distributor of spirituous beverages, a craft distillery, as defined in s. 565.03, or any vendor, is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, provided that the conduct of the spirituous beverage tasting shall be limited to and directed toward the general public of the age of legal consumption.

Section 11. This act shall take effect July 1, 2020.

PCS for HB 1265

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1265 Verification of Employment Eligibility
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Willson MW	Hamon K.W.H.

SUMMARY ANALYSIS

Both Florida and federal law prohibit employers from hiring a person who is not authorized to work in the United States. Federal law requires most employers to verify the eligibility of new hires using certain employee-provided documents. Additionally, federal law requires some employers to use E-Verify, an Internet-based system designed to allow employers to electronically confirm the employment eligibility of newly hired employees in the United States. In Florida, state agencies that are under the direction of the Governor must use E-Verify for all newly hired employees, and must require contractors and subcontractors to use E-Verify for all new hires for the duration of a contract.

The bill provides that, beginning January 1, 2021, public employers, contractors, and subcontractors must register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The bill provides that, beginning January 1, 2021, a private employer must verify the employment eligibility of a person who has accepted an offer of employment or a contract employee upon the renewal or extension of his or her contract. A private employer must verify a person's employment eligibility by either using the E-Verify system or requiring the person to provide the same documentation that is required by the United States Citizenship and Immigration Services on its Employment Eligibility Verification form (Form I-9).

The bill provides that if a private employer does not verify the employment eligibility of a current or future employee, the Department of Economic Opportunity (DEO) must require the private employer to provide DEO with an affidavit stating that:

- the private employer will comply with the employee verification requirements described above,
- the private employer has terminated the employment of all unauthorized aliens in this state, and
- the employer will not intentionally or knowingly employ an unauthorized alien in this state.

If a private employer does not provide the required affidavit within 30 days, the bill requires DEO to order the appropriate agency to suspend all applicable licenses held by the private employer until the private employer provides DEO with the required affidavit. If a private employer violates the verification of employment eligibility requirements three times within a 36 month period, the bill requires permanent revocation of all licenses held by the private employer specific to the business location where the unauthorized alien performed work.

The bill appears to an indeterminate, insignificant fiscal impact on state or local government.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Overview

Both federal and Florida law prohibit a person from employing a person who is not authorized to work in the United States. Additionally, federal law requires some employers to use E-Verify and requires most employers to verify the eligibility of new hires using certain employee-provided documents. Moreover, by executive order of Governor Scott, state agencies under the direction of the Governor, as well as their contractors and subcontractors, must use E-Verify.

E-Verify is a free, Internet-based system through which an employer can verify that a newly hired employee is authorized to work in the United States.[1] E-Verify electronically compares the information from an employee's Form I-9 with records available to the Social Security Administration (SSA) and the U.S. Department of Homeland Security (DHS) to verify the identity and employment eligibility of newly hired employees.[2]

Florida Law

A person may not knowingly employ, hire, recruit, or refer an alien for private or public employment within the state if the alien is not authorized to work under "the immigration laws" or by the United States Attorney General.[3] A first offense of this prohibition is a noncriminal violation punishable by a fine of up to $500; each subsequent offense is a second degree misdemeanor,[4] punishable by up to 60 days in jail[5] and a fine not to exceed $500.[6]

Moreover, by Executive Order 11-116, state agencies that are under the direction of the Governor must use E-Verify for all newly hired employees. The order also requires an agency to include in a contract a provision requiring a contractor to use E-Verify for all new hires for the duration of the contract. These same requirements must be included in the contractor's contracts with subcontractors.[7]

Federal Law

The federal Immigration Reform and Control Act of 1986 (IRCA)[8] made it illegal for any U.S. employer to knowingly:

- Hire, recruit, or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or refer for a fee, any person (citizen or alien) without following the record keeping requirements of the Act.[9]

---

[1] U.S. Citizenship and Immigration Services, *How do I use E-Verify?* https://www.e-verify.gov/sites/default/files/everify/guides/E4en.pdf (last visited Feb. 22, 2020).
[2] DHS and USCIS, *E-Verify User Manual,* https://www.e-verify.gov/e-verify-user-manual-10-introduction/11-background-and-overview (last visited Feb. 22, 2020).
[3] S. 448.09(1), F.S.
[4] S. 448.09(2), F.S.
[5] S. 775.082(4)(b), F.S.
[6] S. 775.083(1)(e), F.S.
[7] Exec. Order No. 11-116 (May 2011), available at http://edocs.dlis.state.fl.us/fldocs/governor/orders/2011/11-116-suspend.pdf (last visited Feb. 22, 2020).
[8] Public Law 99-603, 100 Stat. 3359.

The IRCA established a procedure that employers must follow to verify that employees are authorized to work in the United States.[10] The procedure requires employees to present documents that establish both the worker's identity and eligibility to work, and requires employers to complete a Form I-9 for each new employee hired.[11] The IRCA provides sanctions to be imposed on employers who knowingly employ aliens who are not authorized to work.[12] Federal law contains no criminal sanction for working without authorization, although document fraud is a civil violation.[13] The United States Citizenship and Immigration Services (USCIS) enforces these provisions.[14]

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),[15] which, among other things, created various employment eligibility verification programs, including the Basic Pilot program. Originally, the Basic Pilot program (now referred to as E-Verify) was available in five of the seven states that had the highest populations of unauthorized aliens and was initially authorized for only 4 years. However, Congress has consistently extended the program's life. It expanded the program in 2003, making it available in all 50 states. In 2008, the federal government began requiring any entity that maintained or applied for federal contracts to use E-Verify.[16]

Using E-Verify

The Process, in Context

E-Verify is the last step in a larger eligibility-verification process. This process begins when an employee accepts an offer of employment.[17] Between this point and the employee's first day on the job, he or she must complete Section 1 of the Form I-9, which requires providing his or her name, address, Social Security Number, and citizenship status under penalty of perjury.[18] By the end of the third day on the job, the *employer* is required to complete Section 2, stating under penalty of perjury that he or she has reviewed certain employee-provided documents that establish the employee's eligibility.[19] This is where the required verification of employment eligibility stops for most employers.

Before using E-Verify for the first time, an employer must enroll via the DHS's website.[20] At the end of the enrollment process, the employer must sign a Memorandum of Understanding that provides the terms of agreement between the employer and DHS.[21]

Once enrolled, an employer uses E-Verify by opening a "case" for an employee and entering basic information from the employee's Form I-9 (name, address, SSN) into the case.[22] Then E-Verify

---

[9] 8 U.S.C. § 1324a.
[10] *Id.*
[11] *Id.*
[12] *Id.* at 1324a(a)(1)-(2).
[13] *Id.* at 1324c.
[14] *Id.* at 1324a.
[15] Public Law 104-208.
[16] Department of Homeland Security and USCIS, *History and Milestones [of E-Verify]*, http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=84979589cdb76210VgnVCM100000b92ca60aRCRD&vgnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD (last visited Feb. 22, 2020).
[17] United States Citizenship and Immigration Services, *Complete and Correct Form I-9*, https://www.uscis.gov/i-9-central/complete-and-correct-form-i-9, (last visited Feb. 22, 2020).
[18] *See* 8 C.F.R. § 274a.2(b)(1)(i)(A).
[19] *See* 8 C.F.R. § 274a.2(b)(1)(ii).
[20] Department of Homeland Security and USCIS, *The Enrollment Process*, https://www.e-verify.gov/employers/enrolling-in-e-verify/the-enrollment-process (last visited Feb. 22, 2020).
[21] *The E-Verify Memorandum for Employers*, available at https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf (last visited Feb. 22, 2020).
[22] Department of Homeland Security and USCIS, *ABOUT E-Verify*, https://www.e-verify.gov/about-e-verify (last visited Feb. 22, 2020).

compares that information to records available to the U.S. Department of Homeland Security and the Social Security Administration, and usually within seconds, issues one of several possible results to the employer.[23] A result of "Employment Authorized" indicates that the employee may work in the United States. Other results include:

- Verification In Process - This case was referred to DHS for further verification.
- Tentative Nonconfirmation (TNC) - Information did not match records available to SSA or DHS. Additional action is required.
- Case in Continuance - The employee has visited an SSA field office or contacted DHS, but more time is needed to determine a final case result.
- Close Case and Resubmit - SSA or DHS requires that the employer close the case and create a new case for this employee. This result may be issued when the employee's U.S. passport, passport card, or driver's license information is incorrect.
- Final Nonconfirmation - E-Verify cannot confirm the employee's employment eligibility after the employee visited SSA or contacted DHS.[24]

If the result is TNC, the employer must notify the employee, who must take further action to verify his or her eligibility.[25] If the result is Verification in Process or Case in Continuance, the E-Verify system needs more time to process the case.[26] Lastly, a result of "Final Nonconfirmation" indicates that there is no further action to be taken by any party and that E-Verify will not confirm that the employee is authorized to work in the United States.[27]

Results in FY 2019

In FY 2019, E-Verify processed 38,930,405 cases, 98.51% of which were automatically confirmed as "work authorized" and another 0.23% were confirmed after an initial "mismatch."[28]

For the remaining 1.27% of cases, the employees were not found to be authorized to work in the United States.[29] The vast majority of this 1.27% (0.97%) were cases that were not resolved by the end of FY 2019 for various reasons, including because the case was awaiting further action by either the employer or employee at the end of the fiscal year or because the employer closed the case as "self-terminated."[30]

Accuracy

The most recent independent report of E-Verify's accuracy appears to have been done 2012 by the firm Westat.[31] The report relied on data from 2009 and before.[32]

Westat found that E-Verify was 94% accurate in its final disposition of cases—E-Verify confirmed 94% of employees who were in fact authorized to work in the United States; 94% of the Final Nonconfirmations (FNCs) issued were for people who were in fact not authorized to work in the United

---

[23] *Id.*
[24] Department of Homeland Security and USCIS, *Verification Process*, https://www.e-verify.gov/employers/verification-process (last visited Feb. 22, 2020).
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] Department of Homeland Security and USCIS, *E-Verify Performance*, https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance (last visited Feb. 22, 2020).
[29] *Id.*
[30] *Id.*
[31] Westat, *Evaluation of the Accuracy of E-Verify Findings,* (July, 2012) available at https://www.e-verify.gov/sites/default/files/everify/data/FindingsEVerifyAccuracyEval2012.pdf.
[32] *Id.*

States. As such, according to Westat, 6% of people who were in fact authorized to work in the United States received a FNC from E-Verify.[33]

User Satisfaction

According to the Department of Homeland Security's most recent customer service report, which was published in 2018 regarding users' experiences in 2017, employers rated their experience of "using E-Verify" at "90," based on subcategories such as "ease of use" and "speed of response."[34] These same users rated their overall satisfaction with E-Verify at "85."[35]

In 2017, 13 percent of employers contacted E-Verify by phone for customer service.[36] These employers rated their experience at "89."[37] And 96 percent of those who contacted customer service reported having their issue resolved, usually on the first call (89 percent).[38]

Mandatory Use of E-Verify in Other States

At least 19 other states require the use of E-Verify by public employers, contractors or subcontractors of public employers, or private employers.

The following states require private employers, as well as public employers and their contractors and subcontractors, to use E-Verify:

- North Carolina[39]
- Mississippi[40]
- Georgia[41]
- Arizona[42]
- Alabama[43]
- Utah[44]
- South Carolina[45]

The following states require only public employers and their contractors to use E-Verify:

- Indiana[46]
- Nebraska[47]
- Missouri[48]

---

[33] *Id.*
[34] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Annual Customer Satisfaction Survey 2017*, (Mar. 2018), https://www.e-verify.gov/sites/default/files/everify/data/EVerifyCustomerSatisfactionSurvey2017.pdf (last visited Feb. 22, 2020).
[35] *Id.* This rating is in line with prior years' ratings, which have fluctuated between 85 and 87 since 2011.
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] N.C.G.S. § 160A-169.1 (municipalities); 153A-99.1 (counties); 143-48.5, 143-133.3 (public contractors); 64-26 (private employers that have more than 25 employees); 126-7.1 (state agencies).
[40] Miss. Code § 71-11-3.
[41] Ga. Code § 13-10-91 (public employers and contractors); 36-60-6 (private employers that have more than 10 employees).
[42] Ariz. Rev. Stat. § 41-4401 (public contractors); 23-214 (private and public employers).
[43] Ala. Code § 31-13-15.
[44] Utah Code § 63G-12-301 (private employers having 15 or more employees, unless the employee has a guest worker permit), 63G-12-302 (public employers and contractors). Under both statutes, the employers may use E-Verify or another federal verification program.
[45] S.C. Code § 41-8-20 (private employers); 8-14-20 (public employers and contractors).
[46] Ind. Code § 22-5-1.7-11.1.
[47] Nev. Rev. St. § 4-114.
[48] Miss. Stat. § 285.530.

- Colorado[49]
- Oklahoma[50]
- Texas[51]
- Virginia[52]

Some states' approaches do not fall squarely into the above categories. For example, Tennessee requires only private employers that have 50 or more employees to use E-Verify.[53] Pennsylvania requires public contractors and private *construction* employers to use E-Verify.[54] In Michigan, only contractors of the Michigan Department of Transportation must use E-Verify.[55] Finally, West Virginia requires contractors whose employees work on the Capitol grounds to use E-Verify.[56]

Effect of the Bill

Definitions

The bill defines the following terms:

- "Agency" means an agency, a department, a board, or a commission of this state or a county or municipality which issues a license to operate a business in this state.
- "Department" means the Department of Economic Opportunity.
- "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.
- "Employee" means a person filling an authorized and established position who performs labor or services for a public or private employer in exchange for salary, wages, or other remuneration.
- "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.
- "Legal alien" means a person who is or was lawfully present or permanently residing legally in the United States and allowed to work at the time of employment and remains so throughout the duration of that employment.
- "License" means a franchise, a permit, a certificate, an approval, a registration, a charter, or any similar form of authorization required by state law and issued by an agency for the purpose of operating a business in this state. The term includes, but is not limited to:
    - An article of incorporation.
    - A certificate of partnership, a partnership registration, or an article of organization.
    - A grant of authority issued pursuant to state or federal law.
    - A transaction privilege tax license.

---

[49] Colo. Rev. Stat. § 8-17.5-102.
[50] 25 Okl. St. § 1313 (public employers and contractors must use E-Verify or another federal verification program).
[51] Tex. Nat. Res. Code § 81.072 (public contractors); Tex. Gov. Code § 673.002 (state agencies)
[52] Va. Code § 40.1-11.2 (state agencies), 2.2-4308.2 (public contractors).
[53] Tenn. Code § 50-1-703.
[54] 43 Penn. Stat. § 167.3 (public contractors); 43 Penn. Stat. §168.3 (private construction employers).
[55] Act 200, Public Acts of 2012, Sec. 381.
[56] W. Va. Code, § 15-2D-3.

- "Private employer" means a person or entity that transacts business in this state, that has a license issued by an agency in this state, and that employs persons to perform labor or services in exchange for salary, wages, or other remuneration. The term does not include:
    - A public employer;
    - The occupant or owner of a private residence who hires:
        - Casual labor, as defined in s. 443.036, F.S., to be performed entirely within the private residence; or
        - A licensed independent contractor, as defined in federal laws or regulations, to perform a specified portion of labor or services; or
    - An employee leasing company licensed under part XI of ch. 468, F.S., that enters into a written agreement or understanding with a client company which places the primary obligation for compliance with this section upon the client company. In the absence of a written agreement or understanding, the employee leasing company is responsible for compliance with this section. Such employee leasing company shall, at all times, remain an employer as otherwise defined in federal laws or regulations.

- "Public employer" means an agency within state, regional, county, local, or municipal government, whether executive, judicial, or legislative, or any public school, community college, or state university that employs persons who perform labor or services for that employer in exchange for salary, wages, or other remuneration or that enters or attempts to enter into a contract with a contractor.

- "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

- "Unauthorized alien" means a person who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. § 1324a(h)(3). The term shall be interpreted consistently with that section and any applicable federal rules or regulations.

Public Employers, Contractors, and Subcontractors

The bill provides that, beginning January 1, 2021, public employers, contractors, and subcontractors must register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The bill specifies that a public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

Additional requirements include:

- Subcontractors must provide contractors with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and the contractor must maintain a copy of the affidavit for the duration of the contract.

The bill provides that a public employer, contractor, or subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly employed, hired, recruited or referred an unauthorized alien must terminate the contract with the person or entity. Furthermore, if a public employer has a good faith belief that a subcontractor has knowingly violated relevant portions of the bill, but the contractor has otherwise complied, the public employer must promptly notify the contractor and order the contractor to immediately terminate the contract with the subcontractor. The bill specifies that a termination of a contract for either of these reasons may not be considered a breach of contract.

Actions to challenge such terminations must be filed no later than 20 calendar days after the termination date. If a public employer terminates a contract with a contractor, the contractor may not be awarded a public contract for at least one year after the date on which the contract was terminated, and the contractor is liable for any additional costs incurred by the public employer as a result of the contract termination.

Private Employers

The bill provides that, beginning January 1, 2021, a private employer must verify the employment eligibility of a person who has accepted an offer of employment or a contract employee upon the renewal or extension of his or her contract. The bill specifies that private employers are not required to verify the employment eligibility of employees hired before January 1, 2021.

A private employer must verify a person's employment eligibility by:

- Using the E-Verify system; or
- Requiring the person to provide the same documentation that is required by the United States Citizenship and Immigration Services on its Employment Eligibility Verification form (Form I-9).

The private employer must retain a copy of such documentation for at least 3 years after the person's initial date of employment.

The bill provides that a private employer who complies with the requirements of the bill may not be held civilly or criminally liable under state law for hiring, continuing to employ, or refusing to hire an unauthorized alien if the proper protocol was followed to verify that the person's work authorization status was not that of an unauthorized alien. The bill specifies that compliance with proper protocol creates a rebuttable presumption that a private employer did not knowingly employ an unauthorized alien.

The bill requires a private employer to provide copies of any document used to verify a person's employment eligibility, upon request by:

- The Department of Law Enforcement.
- The Attorney General.
- The state attorney.
- The statewide prosecutor.

The bill specifies that the entities listed above must rely upon the federal government to verify a person's employment eligibility, and may not independently make a final determination as to whether a person is an unauthorized alien.

The bill provides that, if a private employer does not verify the employment eligibility of a current or future employee in accordance with the requirements above, DEO must require the private employer to provide DEO with an affidavit stating that:

- the private employer will comply with the employee verification requirements listed above,
- the private employer has terminated the employment of all unauthorized aliens in this state, and
- the employer will not intentionally or knowingly employ an unauthorized alien in this state.

If the private employer does not provide the required affidavit within 30 days, the bill requires DEO to order the appropriate agency to suspend all applicable licenses held by the private employer until the private employer provides DEO with the required affidavit. The bill specifies that the licenses subject to suspension include all licenses held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the licenses that are subject to suspension are all licenses that are held by the employer at the employer's primary place of business.

For any private employer found to have violated the requirements relating to the verification of employment eligibility for current or future employees three times within any 36 month period, DEO must order the appropriate agencies to permanently revoke all licenses that are held by the private employer specific to the business location where the unauthorized alien performed work. If the private employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the private employer's business in general, the

bill directs DEO to order the appropriate agencies to permanently revoke all licenses that are held by the private employer at the private employer's primary place of business.

The bill specifies that the requirements provided for in the bill be enforced without regard to race, color, or national origin and shall be construed in a manner so as to be fully consistent with any applicable federal laws or regulations.

Economic Development Incentives

The bill amends s. 288.061, F.S., relating to the economic development incentive application process. Beginning July 1, 2020, the bill specifies that the executive director of DEO may not approve an economic development incentive application unless the application includes that the applicant is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees. If DEO determines that an awardee is not complying with this requirement, DEO must notify the awardee by certified mail of their determination of noncompliance and the awardee's right to appeal the determination. On a final determination of noncompliance, the awardee must repay DEO all monies received as an economic development incentive within thirty days of the final determination.

The bill provides for an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1 Amends s. 288.061, F.S., requiring that certain information be included in the economic development incentive application process.

Section 2 Amends s. 448.095, F.S.; relating to the verification of employment eligibility by certain employers.

Section 3 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill requires DEO to enforce the suspension of the license of an employer that fails to verify a person's employment eligibility. This enforcement may occur at the local government level and at specific state agencies. This additional enforcement duty will likely result in additional costs to DEO.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could increase costs for employers that do not currently verify a person's employment eligibility. Though the federal government does not charge a fee for the use of E-Verify, using E-Verify or requiring an employer to verify an individual's employment eligibility by means of document review could increase the labor involved in hiring an employee, especially if E-Verify is used and the initial response for that employee is not "Employment Authorized."

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the verification of employment eligibility; amending s. 288.061, F.S.; requiring that certain information be included in the economic development incentive application process; creating s. 448.095, F.S.; providing definitions; requiring public employers, contractors, and subcontractors to register with and use the E-Verify system; prohibiting such entities from entering into a contract unless each party to the contract registers with and uses the E-Verify system; requiring a subcontractor to provide a contractor with a certain affidavit; requiring a contractor to maintain a copy of such affidavit; authorizing the termination of a contract under certain conditions; providing that such termination is not a breach of contract; authorizing a challenge to such termination; providing certain liability if a contract is terminated; requiring private employers to verify the employment eligibility of newly hired employees beginning on a specified date; providing an exception; providing acceptable methods for verifying employment eligibility; requiring a private employer to maintain certain documentation for a specified time; providing specified immunity and nonliability for private employers; creating a rebuttable

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

presumption for private employers; requiring private employers to provide copies of certain employment documents, upon request, to specified persons or entities for certain purposes; providing for the suspension or revocation of certain licenses under certain circumstances; providing construction; providing an effective date.

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

Section 1. Subsection (7) is added to section 288.061, Florida Statutes, to read:

288.061 Economic development incentive application process.—

(7) Beginning July 1, 2020, the executive director may not approve an economic development incentive application unless the application includes proof to the department that the applicant is registered with and uses the E-Verify system, as defined in s. 448.095, to verify the work authorization status of all newly hired employees. If the department determines that the awardee is not complying with this subsection, the department must notify the awardee by certified mail of the department's determination of noncompliance and the awardee's right to appeal the determination. On a final determination of noncompliance, the awardee must repay all monies received as an economic

CODING: Words stricken are deletions; words underlined are additions.

development incentive to the department within thirty days of the final determination.

Section 2. Section 448.095, Florida Statutes, is created to read:

448.095 Employment eligibility.—

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

(a) "Agency" means an agency, a department, a board, or a commission of this state or a county or municipality which issues a license to operate a business in this state.

(b) "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

(c) "Department" means the Department of Economic Opportunity.

(d) "Employee" means a person filling an authorized and established position who performs labor or services for a public or private employer in exchange for salary, wages, or other remuneration.

(e) "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

(f) "Legal alien" means a person who is or was lawfully present or permanently residing legally in the United States and

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

allowed to work at the time of employment and remains so throughout the duration of that employment.

(g) "License" means a franchise, a permit, a certificate, an approval, a registration, a charter, or any similar form of authorization required by state law and issued by an agency for the purpose of operating a business in this state. The term includes, but is not limited to:

1. An article of incorporation.

2. A certificate of partnership, a partnership registration, or an article of organization.

3. A grant of authority issued pursuant to state or federal law.

4. A transaction privilege tax license.

(h) "Private employer" means a person or entity that transacts business in this state, that has a license issued by an agency in this state, and that employs persons to perform labor or services in exchange for salary, wages, or other remuneration. The term does not include:

1. A public employer;

2. The occupant or owner of a private residence who hires:

a. Casual labor, as defined in s. 443.036, to be performed entirely within the private residence; or

b. A licensed independent contractor, as defined in federal laws or regulations, to perform a specified portion of labor or services; or

CODING: Words stricken are deletions; words underlined are additions.

3. An employee leasing company licensed under part XI of chapter 468 that enters into a written agreement or understanding with a client company which places the primary obligation for compliance with this section upon the client company. In the absence of a written agreement or understanding, the employee leasing company is responsible for compliance with this section. Such employee leasing company shall, at all times, remain an employer as otherwise defined in federal laws or regulations.

(i) "Public employer" means an entity within state, regional, county, local, or municipal government, whether executive, judicial, or legislative, or any public school, community college, or state university that employs persons who perform labor or services for that employer in exchange for salary, wages, or other remuneration or that enters or attempts to enter into a contract with a contractor.

(j) "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

(k) "Unauthorized alien" means a person who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324a(h)(3). The term shall be interpreted consistently with that section and any applicable federal rules or regulations.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(2) PUBLIC EMPLOYERS, CONTRACTORS, AND SUBCONTRACTORS.—

(a) Beginning January 1, 2021, every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

(b)1. If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.

2. The contractor shall maintain a copy of such affidavit for the duration of the contract.

(c)1. A public employer, contractor, or subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated s. 448.09(1) shall terminate the contract with the person or entity.

2. A public employer that has a good faith belief that a subcontractor knowingly violated this subsection, but the contractor otherwise complied with this subsection, shall promptly notify the contractor and order the contractor to immediately terminate the contract with the subcontractor.

3. A contract terminated under subparagraph 1. or subparagraph 2. is not a breach of contract and may not be

CODING: Words stricken are deletions; words underlined are additions.

considered as such.

(d) A public employer, contractor, or subcontractor may file an action with a circuit or county court to challenge a termination under paragraph (c) no later than 20 calendar days after the date on which the contract was terminated.

(e) If a public employer terminates a contract with a contractor under paragraph (c), the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated.

(f) A contractor is liable for any additional costs incurred by the public employer as a result of the termination of the contract.

(3) PRIVATE EMPLOYERS.—

(a) Beginning January 1, 2021, a private employer shall, after making an offer of employment which has been accepted by a person, verify such person's employment eligibility. A private employer is not required to verify the employment eligibility of a continuing employee hired before January 1, 2021. However, if a person is a contract employee retained by a private employer, the private employer must verify the employee's employment eligibility upon the renewal or extension of his or her contract.

(b) A private employer shall verify a person's employment eligibility by:

1. Using the E-Verify system; or

CODING: Words stricken are deletions; words underlined are additions.

2. Requiring the person to provide the same documentation that is required by the United States Citizenship and Immigration Services on its Employment Eligibility Verification form (Form I-9).

The private employer must retain a copy of the documentation provided under this subparagraph for at least 3 years after the person's initial date of employment.

(c) A private employer that complies with this subsection may not be held civilly or criminally liable under state law for hiring, continuing to employ, or refusing to hire an unauthorized alien if the information obtained under paragraph (b) indicates that the person's work authorization status was not that of an unauthorized alien.

(d) For purposes of this subsection, compliance with paragraph (b) creates a rebuttable presumption that a private employer did not knowingly employ an unauthorized alien in violation of s. 448.09(1).

(e) For the purpose of enforcement of this section, the following persons or entities may request, and the private employer must provide copies of, any documents relied upon by the private employer for the verification of a person's employment eligibility, including, but not limited to, any document required under paragraph (b):

1. The Department of Law Enforcement.

2. The Attorney General.

3. The state attorney.

4. The statewide prosecutor.

A person or entity that makes a request under this paragraph must rely upon the federal government to verify a person's employment eligibility, and may not independently make a final determination as to whether a person is an unauthorized alien.

(f) If a private employer does not comply with paragraph (b), the department must require the private employer to provide an affidavit to the department stating that the private employer will comply with paragraph (b) and the private employer has terminated the employment of all unauthorized aliens in this state and that the employer will not intentionally or knowingly employ an unauthorized alien in this state. If the private employer does not provide the required affidavit within 30 days, the department must order the appropriate agency to suspend all applicable licenses held by the private employer until the private employer provides the department with the required affidavit. For the purposes of this paragraph, the licenses that are subject to suspension under this paragraph are all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is

necessary to operate the employer's business in general, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer at the employer's primary place of business.

(g) For any private employer found to have violated paragraph (f) three times within any 36 month period, the department shall order the appropriate agencies to permanently revoke all licenses that are held by the private employer specific to the business location where the unauthorized alien performed work. If the private employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the private employer's business in general, the department shall order the appropriate agencies to permanently revoke all licenses that are held by the private employer at the private employer's primary place of business.

(4) CONSTRUCTION.—This section shall be enforced without regard to race, color, or national origin and shall be construed in a manner so as to be fully consistent with any applicable federal laws or regulations.

Section 3. This act shall take effect July 1, 2020.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.