

Regulatory Reform Subcommittee

Thursday, January 27, 2022
11:30 AM - 1:30 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee

Regulatory Reform Subcommittee

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Meeting Agenda

Thursday, January 27, 2022
11:30 AM – 1:30 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

HB 325 Vacation Rentals by Fischer

HB 705 Mergers and Acquisitions Reporting by Grall

HB 1227 Online Marketplace Transparency by Toledo

HB 1233 Online Training for Private Security Officers by Fine

HB 1451 Malt Beverages by DiCeglie

HB 1509 Private Investigative and Security Services by Byrd

Consideration of the following proposed committee substitute(s):

PCS for HB 577 -- Tenant Safety

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
Phone Numbers

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 325 Vacation Rentals
SPONSOR(S): Fischer
TIED BILLS: **IDEN./SIM. BILLS:** SB 512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Thompson	Anstead
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) in the Department of Business and Professional Regulation (DBPR) licenses and inspects vacation rentals within the state. A vacation rental is classified as any unit or group of units in a condominium or cooperative or any individually or collectively owned home, not a timeshare project, which is rented to guests **more than three times in a calendar year for periods of less than 30 days** or 1 calendar month, or advertised to the public as a place regularly rented to guests. **Local governments may not prohibit vacation rentals or regulate the duration or frequency of such rentals**. Local regulations adopted before June 1, 2011, are not subject to this prohibition.

The bill:

- Adds to the scope of the state preemption of public lodging establishments and public food service establishments by **preempting "licensing"** regulations, and revises the scope of the express state preemption on vacation rentals to allow local jurisdictions to amend local regulations to:
  - Be less restrictive; or
  - Comply with local registration requirements.
- Allows local governments to create a local vacation rental registration program, including a $50 registration application fee, a fine for failure to register, and provides for specific requirements of vacation rental owners and operators.
- Preempts to the state the regulation of advertising platforms, requires users of advertising platforms to provide license and registration information in a vacation rental listing, requires advertising platforms to collect and remit certain taxes and adopt an antidiscrimination policy.
- Grants the Division certain enforcement mechanisms relating to unlicensed activities.
- Specifically does not supersede the authority of condominiums, cooperatives, or homeowners' associations to restrict the use of their properties.
- Requires vacation rental operators to display license and registration information.
- Requires sexual offenders and sexual predators who stay in a vacation rental to register with the local sheriff's office under certain circumstances.

The bill does not appear to have a significant fiscal impact on state or local government.

Except as otherwise provided, the bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Vacation Rentals

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. DBPR licenses vacation rentals within the state and has the power to inspect a licensed vacation rental.[1]

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.[2]

The term "public lodging establishments" includes transient and nontransient public lodging establishments.[3] The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

The term "transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.[4]

The term "vacation rental" means any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.[5]

Current law exempts from licensing requirements living or sleeping facilities that do not fit within the classification of a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment.[6] Currently, the classification for "vacation rental" only applies to situations where the entire unit or dwelling is offered for rent; therefore the rental of individual rooms within a condominium unit or house is excluded from the licensure and regulation of public lodging establishments by the Division.[7]

Licensure

The Division is authorized to issue vacation rental licenses as follows:

- Single license: issued to an individual person or entity, but not a licensed agent, and may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity.
- Group license: issued to a licensed agent to cover all units within a building or group of buildings in a single complex and only covers units held out to the public as a place regularly rented to guests.

[1] S. 509.241, F.S.
[2] S. 509.242(1), F.S.
[3] S. 509.013(4)(a), F.S.
[4] S. 509.013(4)(a)1., F.S.
[5] S. 509.242(1)(c), F.S.
[6] S 509.013(4)(b)9., F.S.
[7] DBPR, Agency Analysis of 2020 Senate Bill 1128, p.2 (Jan. 7, 2020). *See also* 18-06 Fla. Op.Att'y Gen. (2018).

- Collective license: issued to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses per license.[8]

Applicants for licensure must submit the appropriate application and required fee to the Division. The license fees are based on the number of rental units in the establishment. A current license must be conspicuously displayed in the office or lobby of the licensed establishment.[9] If no office or lobby is present on the premises of the licensed establishment, the license must be readily available for inspection upon request.[10]

Currently, there are 53,492 public lodging establishments licensed by the Division. These licenses are distributed as follows:

- Hotels: 2,238 licenses;
- Motels: 2,446 licenses;
- Non-transient apartments: 18,117 licenses;
- Transient apartments: 873 licenses;
- Bed and Breakfast Inns: 259 licenses;
- Vacation rental condominiums: 10,224 licenses;
- Vacation rental dwellings: 19,306 licenses; and
- Vacation rental timeshare projects: 29 licenses.[11]

License Fees

The Division provides the following fee schedule relating to vacation rentals:[12]

- Vacation rentals/collective license.

BASIC FEE	PER UNIT FEE	HEP FEE[13]	TOTAL FEE
$150	$10	$10	VARIES

- Vacation rentals/group and single license.

NUMBER OF UNITS	BASIC FEE	INCREMENTAL UNIT FEE	HEP FEE	TOTAL FEE
SINGLE UNIT	$150	$10	$10	$170
2-25	$150	$20	$10	$180
26-50	$150	$35	$10	$195
51-100	$150	$50	$10	$210
101-200	$150	$75	$10	$235
201-300	$150	$105	$10	$265
301-400	$150	$135	$10	$295
401-500	$150	$160	$10	$320
OVER 500	$150	$190	$10	$350

Applicants for initial licensure are required to pay the full license fee if the application is made during, or more than six months before, the annual renewal period. A half-year fee is authorized if such application is made 6 months or less before the renewal period. A $50 application fee is required when making the initial application or an application for change of ownership. Renewal fees are based upon the number of units under the license when the license was either issued or last renewed, whichever is

[8] S. 509.241, F.S.
[9] S. 509.241(3), F.S.
[10] R. 61C-1.002(1), F.A.C.
[11] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2020-2021*, http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2020_21.pdf (last visited Jan. 18, 2022).
[12] R. 61C-1.008, F.A.C.
[13] S. 509.302, F.S., establishes the Hospitality Education Program. All public lodging establishments and all public food service establishments licensed under ch. 509, F.S., are required to pay an annual fee of no more than $10, which shall be included in the annual license fee and used for the sole purpose of funding the Hospitality Education Program.

most recent. A $50 delinquency fee is required to renew a delinquent license filed with the Division after the expiration date.

Sanitation and Safety

Current law requires each public lodging establishment to meet requirements and standards relating to sanitation and safety.[14] These requirements and standards apply to the following:

- Water, plumbing and waste;
- Public bathrooms (vacation rentals are exempt from this requirement);
- Towels;
- Glassware, tableware, and utensils (vacation rentals are exempt from federal and state standards but must sanitize with household cleaning supplies and provide notice of such in guest rooms);
- Kitchens;
- Ice making machines;
- Locking devices;
- Vermin control;
- Storage and labeling of toxic items;
- Structural components, attachments, and fixtures; and
- Attics, basements, boiler rooms, meter rooms, laundry rooms, and storage rooms.

Ventilation and Fire Safety

Each bedroom in a public lodging establishment must be properly ventilated with windows or mechanical ventilation.[15] Specialized smoke detectors for the deaf and hearing-impaired must be made available upon request by guests in transient public lodging establishments without charge.[16]

In addition, smoke alarms must be installed in every living unit,[17] and automatic fire sprinklers may be required in public lodging establishments if the rental units are located within a building with three or more stories or greater than 75 feet in height.[18] All local fire authority requirements must be met. Electrical wiring must be in good repair.

Conduct on Premises

The operator of a public lodging establishment is authorized to refuse accommodations or service to undesirable guests.[19] Subject to proper notification, an operator may remove guests who:

- Illegally possess or deal controlled substances;
- Are intoxicated;
- Are profane, lewd, or brawling;
- Disturb the peace and comfort of other guests;
- Injure the reputation, dignity, or standing of the establishment;
- Fail to pay rent on time;
- Fail to check out on time;
- Are generally detrimental to the establishment.[20]

The admission to, or the removal from, a public lodging establishment cannot be based upon race, creed, color, sex, physical disability, or national origin.[21]

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[14] *See generally* s. 509.221, F.S., and R. 61C-1&3, F.A.C.
[15] S. 509.221(3), F.S.
[16] R. 61C-1.004, F.A.C.
[17] S. 509.215(1)(b), F.S.
[18] S. 509.215(1), F.S.
[19] S. 509.142, F.S.
[20] S. 509.141(1), F.S.
[21] S. 509.141(1), F.S.

Violations for remaining or attempting to remain in an establishment after being requested to leave are a second-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.[22]

In addition, an operator is authorized to take a person into custody and detain that person for disorderly conduct that creates a threat to the life or safety of the person or others.[23]

Inspections

The Division is required to inspect all public lodging establishments as often as necessary for the enforcement of the law and protection of the public health, safety and welfare. **Each licensed public lodging establishment must be inspected at least biannually (twice per year)**, except for transient and non-transient apartments, which must be inspected at least annually.[24]

Vacation rentals are not subject to this requirement, but must be available for inspection upon a request by the Division. For inspection purposes, the licensee or operator must, upon request, meet the inspector at the site of a specified establishment with keys to the licensed house or unit being inspected.[25]

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways from a person competent to conduct such inspections.[26]

The Division also may inspect a vacation rental in response to a consumer complaint related to sanitation issues or unlicensed activity. In Fiscal Year 2019-2020, the Division received 306 consumer complaints related to vacation rentals, of which 31 were confirmed as a violation by the Division.[27]

Registry

The licensee or operator of a vacation rental must notify the Division of any and all houses or units represented for inclusion in the license application. Anytime a change occurs in the street or unit address or number of houses or units included under the license, the licensee or operator must notify the Division of any and all houses or units included in the license at least 60 days prior to the expiration date of the license. In addition, a list of the included houses or units must be maintained in a written form for inspection by request.[28]

Each operator of a transient establishment must maintain a register showing the dates each rental unit was occupied by a guest as well the rates charged to the occupants. This register must be maintained in chronological order and available for inspection by the Division at any time. Operators must maintain two years of register data.[29]

Violations

Any public lodging establishment found to be in violation of ch. 509, F.S., or rules adopted by the Division, may be subject to administrative actions including the following penalties:

- Fines not to exceed $1,000 per offense; and
- Suspension, revocation, or refusal of a license.[30]

[22] S. 509.141(3), F.S.
[23] S. 509.143(1), F.S.
[24] *See generally* s. 509.032, F.S., r. 61C-1.002, F.A.C.
[25] *Id.*
[26] *See* ss. 509.211(3), 509.2112, F.S., and r. 61C-3.001, F.A.C.
[27] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2020-2021*, at 21.
[28] R. 61C-1.002, F.A.C.
[29] S. 509.101(2), F.S.
[30] S. 509.261(1), F.S.

Preemption Authority

Prior to June 1, 2011, local governments regulated vacation rentals (also referred to as resort dwellings in many local ordinances). Local governments could restrict or prohibit vacation rentals up to, and including, banning the use of residential properties as vacation rentals.

Legislation in 2011 preempted the authority to regulate vacation rentals to the state.[31] The preemption prevented local governments from enacting any new law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.

The 2011 preemption also "grandfathered" any local law, ordinance, or regulation of vacation rentals enacted on or prior to June 1, 2011.[32]

Prior to the 2011 preemption, several municipalities had created regulations specifically relating to vacation rentals.[33] As an example, one ordinance prohibited owners of single-family residences in residential zones from renting their properties for durations of less than 30 days, although it grandfathered certain vacation rentals that had already obtained all applicable state and local licenses and permits.[34] Subsequent to the enactment of the 2011 legislation, the vacation rental market experienced growth.[35]

In 2014, the Legislature narrowed the scope of the preemption to preempt only those local regulations that:

- Prohibit vacation rentals; or
- Regulate the duration or frequency of vacation rentals.

Thus, local governments can regulate vacation rentals to the extent those regulations do not prohibit vacation rentals, or restrict the duration or frequency of vacation rentals. The grandfather provision for regulations adopted on or before June 1, 2011, was retained.[36]

This preemption does not apply to local regulations exclusively relating to "property valuation as a criterion for vacation rental if the local regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern."[37]

In addition, the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. However, local governments or local enforcement districts are still allowed to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code.[38]

Recent Activity

[31] Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), F.S.
[32] *Id.*
[33] *See* City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. *See also* Monroe County Code, No. 004-1997 (2013); Bal Harbour Village Code of Ordinances, s. 21-363.
[34] City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. *See also City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2nd DCA 2011).
[35] Melissa Maynard, *As Short-Terms Rentals Boom, Regulation an Issue*, THE PEW CHARITABLE TRUST (June, 6, 2013), http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/06/06/as-shortterms-rentals-boom-regulation-an-issue (last visited Jan. 18, 2022).
[36] Ch. 2014-71, Laws of Fla., codified in s. 509.032(7)(b), F.S.
[37] S. 509.032(7)(c), F.S.
[38] S. 509.032(7)(a), F.S.

Homeowners found to be in conflict with ordinances regulating vacation rentals have taken legal action against their respective local governments through the Bert J. Harris, Jr., Private Property Rights Protection Act.[39] The act provides a cause of action for private property owners whose real property has been inordinately burdened by a specific action of a governmental entity that may not rise to the level of a "taking" under the State or Federal Constitutions. The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.[40]

In November 2015, the City of Anna Maria passed and adopted an ordinance that provides a general framework for the regulation of vacation rentals, including maximum occupancy requirements. According to the city's website, since April 2016, approximately 113 Bert Harris Act claims relating to the ordinance have been filed that could amount to approximately $38 million in damages.[41]

In March 2016, Miami Beach, which bans all short term rentals, passed an ordinance making the fine for a first violation for a resident caught renting short-term $20,000. Each subsequent fine increases by $20,000 and can be as high as $100,000. Vacation/short-term rentals that are permitted in certain zoning districts of Miami Beach are required to provide and conspicuously display the city-issued business tax receipt number and the resort tax certificate number in every advertisement or listing of any type in connection with the rental of the residential property.[42]

In June 2018, it was reported that Miami Beach had issued $12.1 million in fines, only $174,000 of which had been paid. Some vacation rental owners were reported to have accumulated up to $60,000 in fines.[43] Since then, the Third District Court of Appeals invalidated the city's fine structure after determining the regulations conflict with state law that caps violation fines between $1,000 and $5,000.[44] As a result, the city has left the regulations in place and simply revised the fine structure. First-time offenders are fined $1,000 a day, and repeat offenders are fined $5,000 per day. According to a memo from the City Attorney, the new fine structure complies with the ruling against Miami Beach.[45]

Condominiums, Cooperatives, and Homeowners' Associations

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common elements.[46] A condominium is created by recording a declaration in the public records of the county in which the condominium will be located.[47] A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws governing the administration of the association. The declaration as originally recorded or as amended may include covenants and restrictions concerning the use, occupancy, and transfer of the units in the association.

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[39] Kathy Prucnell, *2 more Holmes Beach Bert Harris claims proceed to courthouse*, THE ISLANDER (Feb. 20, 2018), https://www.islander.org/2018/02/2-more-holmes-beach-bert-harris-claims-proceed-to-courthouse/ (last visited Jan. 18, 2022).
[40] S. 70.001, F.S.
[41] CITY OF ANNA MARIA, *Bert J. Harris, Jr., Private Property Rights Protection Act Claim Filings*, http://www.cityofannamaria.com/residents/bert_harris_claim.php (last visited Jan. 18, 2022).
[42] *See* Miami Beach City Code, Sec. 142-1111 and 142-905(b).
[43] Chabeli Herrera, *Miami Beach has the country's highest short-term rental fines. It just got sued,* MIAMI HERALD (June 28, 2018), https://www.miamiherald.com/news/business/article213954174.html.
[44] Francisco Alvarado, *Miami-Dade judge strikes down Miami Beach short-term rental ban*, TheRealDeal South Florida Real Estate News (Oct. 8, 2019), https://therealdeal.com/miami/2019/10/08/miami-dade-judge-strikes-down-miami-beach-short-term-rental-ban/ (last visited Jan. 18, 2022).
[45] Francisco Alvarado, *Miami Beach slashes fines for illegal short-term rentals*, TheRealDeal South Florida Real Estate News (Oct. 14, 2019), https://therealdeal.com/miami/2020/10/14/miami-beach-slashes-fines-for-illegal-short-term-rentals/ (last visited Jan. 18, 2022).
[46] S. 718.103(11), F.S.
[47] S. 718.104(2), F.S.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S., where real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[48] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are similar in many ways. A cooperative is created using "cooperative documents" which include articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any. The documents may include restrictions, which affect the use of the property.

A homeowners' association (HOA) is an association of residential property owners, created pursuant to ch. 720, F.S., where voting membership consists of parcel owners, membership is a mandatory condition of parcel ownership, and which may impose assessments that, if unpaid, can become a lien on the parcel.[49] Chapter 720, F.S., only regulates HOAs whose covenants and restrictions include mandatory assessments. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes those provided in ch. 720, F.S., and contained in the governing documents of the association. The governing documents include the recorded covenants and restrictions, bylaws, articles of incorporation, and duly adopted amendments to those documents. The documents may include restrictive covenants governing the use and occupancy of properties.

Based on these laws, condominium, cooperative, and homeowners' associations may enact provisions that restrict the ability of the property owners to rent their properties.[50] This includes actions such as prohibiting owners from renting their properties, restricting the duration of the rental term, or limiting the frequency owners are allowed to rent their properties.

Florida Sexual Predators Act

Current law requires all sexual offenders and sexual predators to comply with a number of statutory registration requirements. A sexual offender must report in person to the sheriff's office to register within 48 hours of:

- Establishing permanent, temporary, or transient residence in Florida; or
- Being released from the custody, control, or supervision of the Department of Corrections (DOC) or from the custody of a private correctional facility.[51]

A sexual predator must register:

- With DOC if the sexual predator is in DOC's custody or control, under DOC's supervision, or in the custody of a private correctional facility; [52]
    - If the sexual predator is under DOC's supervision but not in custody, he or she must register within 3 days of the court designating him or her as a sexual predator;[53]
- With the custodian of the local jail, within 3 days of the court designating him or her as a sexual predator, if the sexual predator is in the custody of a local jail;[54]
- In person at the sheriff's office in the county where:
    - The sexual predator establishes or maintains a residence within 48 hours of establishing or maintaining a residence in Florida;[55] or
    - The sexual predator was designated a sexual predator within 48 hours after such finding is made.[56]

Residence

[48] S. 719.103(2)(26), F.S.
[49] S. 720.301(9), F.S.
[50] Motley Fool, *Can an HOA Restrict Rentals? (Spoiler Alert: Yes)*, https://www.fool.com/millionacres/real-estate-investing/rental-properties/can-hoa-restrict-rentals-spoiler-alert-yes/# (last visited Jan. 21, 2022).
[51] S. 943.0435(2)(a)1., F.S.
[52] S. 775.21(6)(b), F.S.
[53] Id.
[54] S. 775.21(6)(c), F.S.
[55] S. 775.21(6)(e)a., F.S.
[56] S. 775.21(6)(2)b., F.S.

Residence, for the purposes of registration for both sexual offenders and sexual predators, is defined as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 3 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.
- "Transient residence" means a county where a person lives, remains, or is located for a period of 3 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address. [57]

Continuing Reporting Requirements

A sexual offender or sexual predator must report the following updates within 48 hours:

- Change in the offender's permanent, temporary, or transient residence;
- Change in the offender's name, by reason of marriage or other legal process;
- When the offender vacates a permanent, temporary, or transient residence, or when the offender remains in a permanent, temporary, or transient residence after reporting his or her intent to vacate such a residence;
- Use of a new electronic mail address or Internet identifier;
- Change in vehicles owned;
- Change to home or cellular telephone numbers;
- Change to employment information;
- Change in status related to enrollment, volunteering, or employment at institutions of higher education; and
- International and out-of-state travel information.[58]

Effect of the Bill

Preemptions

The bill adds to the scope of the state preemption of public lodging establishments and public food service establishments, by also preempting "licensing."

The bill revises the scope of the express state preemption on vacation rentals to allow local jurisdictions to adopt local regulations:

- As long as the regulation is less restrictive; or
- To comply with local registration requirements.

The bill also preempts the regulation of advertising platforms to the state.

The bill maintains the exemption to the preemption that allows only local ordinances adopted on or before June 1, 2011, to remain in effect.

The bill maintains the exemption to the preemption for areas of critical state concern so that these areas remain fully exempted from the preemption, and may have existing ordinances that were adopted after June 1, 2011.

Local Vacation Rental Registration Program

[57] S. 775.21, F.S.
[58] SS. 943.0435(4)(e)2. & 775.21(6)(a)1.a., F.S.

The bill authorizes local laws, ordinances, or regulations to require the registration of vacation rentals with a local vacation rental registration program.

The bill authorizes local governments to adopt such a program and impose a fine for failure to register under the program.

The bill authorizes local governments to charge a fee of no more than $50 for processing a registration application, and prohibits a local law, ordinance, or regulation from requiring the renewal of a registration more than once per year. However, if there is a change of ownership, the new owner may be required to submit a new application for registration.

The bill provides that as a condition of registration, the local law, ordinance, or regulation may only require the owner or operator of a vacation rental to:

- Submit identifying information about the owner or the owner's agents and the subject vacation rental property.
- Obtain a license as a transient public lodging establishment issued by the Division within 60 days after local registration.
- Obtain all required tax registrations, receipts, or certificates issued by DOR, a county, or a municipal government.
- Update required information on a continuing basis to ensure it is current.
- Comply with parking standards and solid waste handling and containment requirements, so long as such standards and requirements are not imposed solely on vacation rentals.
- Designate and maintain at all times a responsible party who is capable of responding to complaints and other immediate problems related to the vacation rental, including being available by telephone at a listed phone number.
- Pay in full all recorded municipal or county code liens against the subject property.
    - The local government may withdraw its acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.

The bill requires that within 15 business days after receiving an application for registration of a vacation rental, the local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice specifying with particularity any areas that are deficient.

The bill provides that a vacation rental owner or operator and the local government may agree to a reasonable request to extend the timeframes, particularly in the event of a force majeure or other extraordinary circumstance.

The bill requires a local government that denies an application for registration of a vacation rental to give written notice to the applicant as follows:

- The notice may be provided by United States mail or electronically.
- The notice must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of an ordinance, a rule, a statute, or other legal authority for the denial of the registration.

The bill:

- Prohibits local governments from denying an applicant from reapplying if the applicant cures the identified deficiencies.
- Provides that if the local government fails to accept or deny the registration within the timeframes provided, the application is deemed accepted.
- Provides that upon an accepted registration of a vacation rental, a local government must assign a unique registration number to the vacation rental or other indicia of registration and provide the registration number or other indicia of registration to the owner or operator of the vacation rental in writing or electronically.
- Authorizes local governments to terminate or refuse to issue or renew a vacation rental registration when:

- The operation of the subject premises violates a registration requirement authorized pursuant to this paragraph or a local law, ordinance, or regulation that does not apply solely to vacation rentals; or
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

Vacation Rental Licenses

Effective January 1, 2023, the bill:

- Requires all applications for a vacation rental license to, if applicable, include the local registration number or other proof of registration required by local law, ordinance, or regulation.
- Authorizes the Division upon receiving an application for a vacation rental license to grant a temporary license that authorizes the vacation rental to begin operation while the application is pending and to post the information required under s. 509.243(1)(c), F.S.
  - The temporary license automatically expires upon final agency action regarding the license application.
- Requires any license issued by the Division to be displayed conspicuously to the public inside the licensed establishment, instead of "in the office or lobby."
- Requires the operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number and the applicable local registration number.

Advertising Platforms Definition

The bill defines the term "advertising platform" as a person as defined in s. 1.01, F.S.,[59] that:

- Provides an online application, software, a website, or a system: through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;
- Provides or maintains a marketplace: for the renting of a vacation rental for transient occupancy; and
- Provides a reservation or payment system: that facilitates a transaction for the renting of a vacation rental for transient occupancy and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for the rental transaction.

Advertising Platform Requirements

Effective January 1, 2023, the bill provides that advertising platforms must:

- Require that a person who places an advertisement for the rental of a vacation rental to:
  - Include in the advertisement the vacation rental license number and, if applicable, the local registration number; and
  - Attest to the best of the person's knowledge that the license number for the vacation rental property and the local registration are current, valid, and accurately stated in the advertisement.
- Display the vacation rental license number and, if applicable, the local registration number.
- By July 1, 2023, check that the vacation rental license number provided by the owner or operator appears as current in the information posted by the division and applies to the subject vacation rental before publishing the advertisement on its platform and again on a quarterly basis.
- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the Division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the Division.

[59] S. 1.01(3), F.S., defines the word "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

- Adopt an anti-discrimination plan to help prevent discrimination, and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

Advertising Platform Tax Requirements

The bill requires advertising platforms to collect and remit taxes due under certain provision of Florida's tax code resulting from the reservation and payment of a vacation rental property through an advertising platform.

The bill includes tax collection and remittance requirements for advertising platforms within ch. 212, F.S.

The bill provides that in order to facilitate the remittance of such taxes, DOR and counties that have elected to self-administer the taxes imposed under ch. 125, F.S., must allow advertising platforms to register, collect, and remit such taxes.

The bill provides that advertising platforms that comply with the requirements are deemed to be in compliance. The bill also provides that it does not create and is not intended to create a private cause of action against advertising platforms, and an advertising platform may not be held liable for any action it takes voluntarily in good faith in relation to its users to comply with ch. 509, F.S., or the advertising platform's terms of service.

Division Requirements

By July 1, 2023, the bill requires the Division to maintain vacation rental license information in a readily accessible electronic format.

The bill provides enforcement processes for the Division to issue a cease and desist order for any person who violates ch. 509, F.S., the chapter of law governing "lodging and food service establishments." The bill authorizes the Division to seek an injunction or a writ of mandamus to enforce a cease and desist order. If the Division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, F.S., it is entitled to collect its attorney fees and costs, together with any cost of collection.

The bill:

- Authorizes the Division to fine an advertising platform up to $1,000 per offense for violations of its new requirements or of the rules of the Division.
- Authorizes the Division to regard as a separate offense each day or portion of a day in which an advertising platform is operated in violation.
- Requires the Division to issue a written warning or notice and provide the advertising platform 15 days to cure such violation before commencing any legal proceeding.

The bill authorizes the Division to revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

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

The bill authorizes the Division to suspend, for a period of not more than 30 days, a vacation rental license when the owner or operator has been cited for two or more code violations related to the

vacation rental during a period of 90 days. The Division is required issue a written warning or notice and provide an opportunity to cure a violation before commencing a legal proceeding.

Condominiums, Cooperatives, and Homeowners' Associations

The bill specifies that the application of the provisions in the bill shall not supersede any current or future declaration or declaration of condominium adopted pursuant to ch. 718, F.S., cooperative documents adopted pursuant to ch. 719, F.S., or declaration or declaration of covenants adopted pursuant to ch. 720, F.S.

Department of Revenue Rulemaking

The bill grants DOR emergency rulemaking authority to implement the changes made by the bill relating to the collection of taxes, including establishing procedures to facilitate the remittance of taxes. The emergency rules will be effective for 6 months after adoption and may be renewed while DOR adopts permanent rules. The section of the bill authorizing the emergency rules will expire January 1, 2025.

Sexual Offenders and Predators

The bill amends s. 775.21, F.S., to require sexual offenders and sexual predators to register with the local sheriff's office if they stay in a vacation rental for 24 hours or more (currently set at stays of 3 days or more).

Effective Date

The bill becomes effective upon becoming law, except for the provisions otherwise expressly provided in the bill. The requirements for vacation rental owners or operators to display license and tax information becomes effective January 1, 2023. The framework of provisions governing advertising platforms becomes effective January 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.03, F.S., relating to transient rentals tax collection and remittance by advertising platforms.

Section 2: Amends s. 509.013, F.S., defining the term "advertising platform."

Section 3: Amends s. 509.032, F.S., revising preemption authority, making conforming changes.

Section 4: Amends s. 509.241, F.S., revising display of vacation rental license requirements.

Section 5: Creates s. 509.243, F.S., governing advertising platforms.

Section 6: Amends s. 509.261, F.S., relating to revocation or suspension of licenses, fines, procedure.

Section 7: Amends s. 775.21, F.S., revising "The Florida Sexual Predators Act."

Section 8: Amends s. 159.27, F.S., conforming a cross reference.

Section 9: Amends s. 212.08, F.S., conforming a cross reference.

Section 10: Amends s. 316.1955, F.S., conforming a cross reference.

Section 11 Amends s. 404.056, F.S., conforming a cross reference.

Section 12: Amends s. 477.0135, F.S., conforming a cross reference.

Section 13: Amends s. 509.221, F.S., conforming a cross reference.

Section 14: Amends s. 553.5041, F.S., conforming a cross reference.

Section 15: Amends s. 559.955 conforming a cross reference.

Section 16: Amends s. 705.17, F.S., conforming a cross reference.

Section 17: Amends s. 705.185, F.S., conforming a cross reference.

Section 18: Amends s. 705.1355, F.S., conforming a cross reference.

Section 19: Amends s. 877.24, F.S., conforming a cross reference.

Section 20: Creates an unnumbered section providing for applicability.

Section 21: Creates an unnumbered section authorizing DOR emergency rulemaking authority.

Section 22: Provides for effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On November 5, 2021, the Revenue Estimating Conference (REC) adopted the middle estimate, which shows a zero impact for the proposed language.[60]

   Indeterminate. According to DBPR, there will be an increase in licensing revenue, but it is unknown how many rental advertisements which are currently exempt from licensing would then require licensure. The bill may also result in an indeterminate increase in fines due to noncompliance.[61]

2. Expenditures:

   DBPR has indicated that an increase in staff and costs will be needed to implement the bill, including an additional 6 FTE and total anticipated costs of $497,671 ($435,974 recurring).[62]

   FDLE has indicated that an increase in staff and costs will be needed to implement the bill, including an additional 4 FTE and total anticipated costs of $693,730 ($319,750 recurring).[63]

   FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate. The bill may create an increase in tourism taxes and revenue related to local registration fees and fines.

2. Expenditures:

   Indeterminate. According to FDLE, the bill:[64]

[60] Revenue Estimating Conference, Revenue Impact Results, Nov. 5, 2021, http://edr.state.fl.us/content/conferences/revenueimpact/archives/2022/_pdf/Impact1105.pdf, p. 38, (last visited Jan. 21, 2022).
[61] Florida Department of Business and Professional Regulation, Agency Analysis of 2022 SB 512, p. 6 (Oct. 15, 2021).
[62] *Id.* at 10.
[63] Florida Department of Law Enforcement, Agency Analysis of 2022 HB 325, p. 4 (Nov. 15, 2021).
[64] *Id.* at 3.

Requires sexual predators and offenders to register in person at the sheriff's office in the county of the vacation rental if they are lodging in the vacation rental for 24 hours or more. This will lead to a substantial increase in the number of sexual predators and offenders required to complete a registration in person at sheriffs' offices throughout the state, potentially requiring an increase in registration staff to accommodate the growth in registrants who must appear in person to register.

May also require increased hours of availability for the sheriffs' offices to allow for the substantially decreased time to establish a residency in a vacation rental. For example, at least 14 sheriffs' offices have three or more consecutive days where registration is unavailable. Eight registration offices require appointments to register, and only four are open for registration 24 hours a day. As written, the bill offers no monetary provisions for sheriffs' offices and may require that sheriffs' offices seek additional funds from their own local government to expand registration hours and hire additional registration staff.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide a more predictable and uniform regulatory framework for vacation rentals in Florida.

C. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides emergency rulemaking authority for DOR to implement the bill's provisions.

The Division will need to update its rules based on the provision that authorizes the Division to fine an advertising platform. Current law appears to provide sufficient rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FDLE has indicated concerns as follows:

- The amended language of "temporary residence" in s. 775.21(2)(n), FS, as it will have a significant impact on the Florida Sexual Offender and Predator Registry and will certainly lead to litigation challenging the statutes (and registry). The department recommends removing the language amending the definition of "temporary residence."
- Affords no direction, responsibilities, mechanisms or timelines regarding the distribution of such "Vacation Rental registration information." If the intent is to provide updated information on sexual offenders and predators in vacation rentals immediately upon registration, this is not attainable for persons coming into Florida that have not previously registered in the state (which is expected to be a large proportion of registrations received under this bill). Registrants coming to Florida from other states require research and information from out-of-state criminal justice partners prior to their information being disseminated to the public. Those partners, such as

other state registries and clerks of court, are generally open on regular weekday business hours and therefore may not provide the information required for the department to notify the public that a registrant is in a vacation rental until they have already vacated it.

- Takes effect upon becoming law, which allows no time for any of the requisite technological updates, notice and training to law enforcement partners or notice to offenders and predators regarding the change to registration requirement. Such a circumstance will place registrants at risk of a second or third-degree felony arrest for failure to register.[65]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[65] *Id.* at 5 and 6.

A bill to be entitled

An act relating to vacation rentals; amending s. 212.03, F.S.; requiring advertising platforms to collect and remit taxes for certain transactions; reordering and amending s. 509.013, F.S.; defining the term "advertising platform"; amending s. 509.032, F.S.; conforming a cross-reference; revising the regulated activities of public lodging establishments and public food service establishments preempted to the state to include licensing; revising an exemption to the prohibition against certain local regulation of vacation rentals; expanding the authority of local laws, ordinances, or regulations to include requiring vacation rentals to register with local vacation rental registration programs; authorizing local governments to adopt vacation rental registration programs and impose fines for failure to register; authorizing local governments to charge fees for processing registration applications; specifying requirements, procedures, and limitations for local vacation rental registration programs; authorizing local governments to terminate or refuse to issue or renew vacation rental registrations under certain circumstances; preempting the regulation of advertising platforms to the state; amending s.

509.241, F.S.; requiring applications for vacation rental licenses to include certain information; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to issue temporary licenses upon receipt of vacation rental license applications; providing for expiration of temporary vacation rental licenses; requiring licenses issued by the division to be displayed conspicuously to the public inside the licensed establishment; requiring the owner or operator of certain vacation rentals to also display its vacation rental license number and applicable local registration number; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements and attest to certain information; requiring advertising platforms to display and check such information; requiring the division to maintain certain information in a readily accessible electronic format by a certain date; requiring advertising platforms to remove an advertisement or listing under certain conditions and within a specified timeframe; requiring advertising platforms to collect and remit taxes for certain transactions; authorizing the division to issue and

deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which certain hearings may be sought; authorizing the division to file certain proceedings; authorizing the division to seek certain remedies for the purpose of enforcing a cease and desist notice; authorizing the division to collect attorney fees and costs under certain circumstances; authorizing the division to impose a fine on advertising platforms for certain violations; requiring the division to issue written warnings or notices before commencing certain legal proceedings; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; providing construction; amending s. 509.261, F.S.; authorizing the division to revoke, refuse to issue or renew, or suspend vacation rental licenses under certain circumstances; amending s. 775.21, F.S.; revising the definition of the term "temporary residence"; amending ss. 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 559.955, 705.17, 705.185, 717.1355, and 877.24, F.S.; conforming cross-references to changes made by the act; providing applicability; authorizing the Department of Revenue to adopt emergency rules;

providing requirements and an expiration for the emergency rules; providing for the expiration of such rulemaking authority; providing effective dates.

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

Section 1. Effective January 1, 2023, subsection (2) of section 212.03, Florida Statutes, is amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions.—

(2)(a) The tax provided for herein shall be in addition to the total amount of the rental, shall be charged by the lessor or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this chapter, who receives said rental or payment. The owner, lessor, or person receiving the rent shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who

manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

(b) If a guest uses a payment system on or through an advertising platform, as defined in s. 509.013, to pay for the rental of a vacation rental located in this state, the advertising platform shall collect and remit taxes as provided in this paragraph.

1. An advertising platform, as defined in s. 509.013, which owns, operates, or manages a vacation rental or which is related within the meaning of s. 267(b), s. 707(b), or s. 1504 of the Internal Revenue Code of 1986 to a person who owns, operates, or manages the vacation rental shall collect and remit all taxes due under this section and ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055 which are related to the rental.

2. An advertising platform to which subparagraph 1. does not apply shall collect and remit all taxes due from the owner, operator, or manager under this section and ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055 which are related to the rental. Of the total amount paid by the lessee or rentee, the amount retained by the advertising platform for reservation or payment service is not taxable under this section or ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055.

In order to facilitate the remittance of such taxes, the department and counties that have elected to self-administer the taxes imposed under chapter 125 must allow advertising platforms to register, collect, and remit such taxes.

Section 2. Section 509.013, Florida Statutes, is reordered and amended to read:

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

(1) "Advertising platform" means a person as defined in s. 1.01 who:

(a) Provides an online application, software, a website, or a system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;

(b) Provides or maintains a marketplace for the renting of a vacation rental for transient occupancy; and

(c) Provides a reservation or payment system that facilitates a transaction for the renting of a vacation rental for transient occupancy and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for the rental transaction.

(3) ~~(1)~~ "Division" means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(8) ~~(2)~~ "Operator" means the owner, licensee, proprietor,

lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

(4) ~~(3)~~ "Guest" means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

(10)(a) ~~(4)(a)~~ "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

(9)(a) ~~(5)(a)~~ "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers;

or prepared before ~~prior to~~ being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit fraternal, or nonprofit civic organization claiming an exclusion under this subparagraph must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

3. Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. Upon request by the division, the event host must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

4. Any eating place located on an airplane, train, bus, or watercraft that ~~which~~ is a common carrier.

5. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

6. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by

division rule.

10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

(2) ~~(6)~~ "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(11) ~~(7)~~ "Single complex of buildings" means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(12) ~~(8)~~ "Temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.

(13) ~~(9)~~ "Theme park or entertainment complex" means a 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.

(14) ~~(10)~~ "Third-party provider" means, for purposes of s. 509.049, any provider of an approved food safety training

program that provides training or such a training program to a public food service establishment that is not under common ownership or control with the provider.

(16) ~~(11)~~ "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.

(17) ~~(12)~~ "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

(15) ~~(13)~~ "Transient" means a guest in transient occupancy.

(6) ~~(14)~~ "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

(7) ~~(15)~~ "Nontransient occupancy" means occupancy when it is the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

(5) ~~(16)~~ "Nontransient" means a guest in nontransient occupancy.

Section 3. Paragraph (c) of subsection (3) and paragraphs

(a) and (b) of subsection (7) of section 509.032, Florida Statutes, are amended, and paragraph (d) is added to subsection (7) of that section, to read:

509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of the food-

recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013 ~~s. 509.013(5)(b)~~, a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and

the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b)1. A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is amended to be less restrictive or to comply with the local registration requirements provided in this paragraph. Notwithstanding paragraph (a), a local law, ordinance, or regulation may require the registration of vacation rentals with a local vacation rental registration program. Local governments may adopt a vacation rental registration program pursuant to subparagraph 3. and impose a fine for failure to register under the vacation rental registration program.

2. Local governments may charge a fee of no more than $50 for processing a registration application. A local law, ordinance, or regulation may not require renewal of a registration more than once per year. However, if there is a change of ownership, the new owner may be required to submit a new application for registration.

3. As a condition of registration, the local law, ordinance, or regulation may only require the owner or operator of a vacation rental to:

a. Submit identifying information about the owner or the

owner's agents and the subject vacation rental property.

b. Obtain a license as a transient public lodging establishment issued by the division within 60 days after local registration.

c. Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipal government.

d. Update required information on a continuing basis to ensure it is current.

e. Comply with parking standards and solid waste handling and containment requirements, so long as such standards and requirements are not imposed solely on vacation rentals.

f. Designate and maintain at all times a responsible party who is capable of responding to complaints and other immediate problems related to the vacation rental, including being available by telephone at a listed phone number.

g. Pay in full all recorded municipal or county code liens against the subject property. The local government may withdraw its acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.

4.a. Within 15 business days after receiving an application for registration of a vacation rental, the local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice specifying with particularity any areas that are

deficient.

b. The vacation rental owner or operator and the local government may agree to a reasonable request to extend the timeframes provided in this subparagraph, particularly in the event of a force majeure or other extraordinary circumstance.

c. When a local government denies an application for registration of a vacation rental, the local government must give written notice to the applicant. Such notice may be provided by United States mail or electronically. The written notice must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of an ordinance, a rule, a statute, or other legal authority for the denial of the registration. A local government may not deny any applicant from reapplying if the applicant cures the identified deficiencies.

d. If the local government fails to accept or deny the registration within the timeframes provided in this subparagraph, the application is deemed accepted.

e. Upon an accepted registration of a vacation rental, a local government shall assign a unique registration number to the vacation rental or other indicia of registration and provide the registration number or other indicia of registration to the owner or operator of the vacation rental in writing or electronically.

5. The local government may terminate or refuse to issue

or renew a vacation rental registration when:

a. The operation of the subject premises violates a registration requirement authorized pursuant to this paragraph or a local law, ordinance, or regulation that does not apply solely to vacation rentals; or

b. The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

(d) The regulation of advertising platforms is preempted to the state as provided in this chapter.

Section 4. Effective January 1, 2023, subsections (2) and (3) of section 509.241, Florida Statutes, are amended to read:

509.241 Licenses required; exceptions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division before ~~prior to~~ the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive a public lodging establishment license. All applications for a vacation rental license must, if applicable, include the local registration number or other proof of registration required by local law, ordinance, or regulation. Upon receiving an application for a vacation rental license, the

division may grant a temporary license that authorizes the vacation rental to begin operation while the application is pending and to post the information required under s. 509.243(1)(c). The temporary license automatically expires upon final agency action regarding the license application.

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also display the vacation rental license number and, if applicable, the local registration number.

Section 5. Effective January 1, 2023, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number and, if applicable, the local registration number; and

2. Attest to the best of the person's knowledge that the license number for the vacation rental property and the local registration are current, valid, and accurately stated in the

advertisement.

(b) An advertising platform must display the vacation rental license number and, if applicable, the local registration number. Effective July 1, 2023, the advertising platform must check that the vacation rental license number provided by the owner or operator appears as current in the information posted by the division pursuant to paragraph (c) and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) By July 1, 2023, the division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must remove from public view an advertisement or a listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

(3) If a guest uses a payment system on or through an advertising platform to pay for the rental of a vacation rental

located in this state, the advertising platform must collect and remit all taxes due under ss. 125.0104, 125.0108, 205.044, 212.03, 212.0305, and 212.055 related to the rental as provided in s. 212.03(2)(b).

(4) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or s. 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provision of the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, it is entitled to collect attorney fees and costs, together with any cost of collection.

(5) The division may fine an advertising platform an amount not to exceed $1,000 per offense for violations of this section or of the rules of the division. For the purposes of this subsection, the division may regard as a separate offense each day or portion of a day in which an advertising platform is operated in violation of this section or rules of the division. The division shall issue a written warning or notice and provide

the advertising platform 15 days to cure a violation before commencing any legal proceeding under subsection (4).

(6) Advertising platforms shall adopt an antidiscrimination policy to help prevent discrimination among their users and shall inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

(7) Advertising platforms that comply with the requirements of this section are deemed to be in compliance with the requirements of this chapter. This section does not create and is not intended to create a private cause of action against advertising platforms. An advertising platform may not be held liable for any action it takes voluntarily in good faith in relation to its users to comply with this chapter or the advertising platform's terms of service.

Section 6. Subsections (10) and (11) are added to section 509.261, Florida Statutes, to read:

509.261 Revocation or suspension of licenses; fines; procedure.—

(10) The division may revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

(a) The operation of the subject premises violates the terms of an applicable lease or property restriction, including

any property restriction adopted pursuant to chapter 718, chapter 719, or chapter 720, as determined by a final order of a court of competent jurisdiction or a written decision by an arbitrator authorized to arbitrate a dispute relating to the subject property and a lease or property restriction;

(b) The owner or operator fails to provide proof of registration, if required by local law, ordinance, or regulation;

(c) The registration of the vacation rental is terminated by a local government as provided in s. 509.032(7)(b)5.; or

(d) The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

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

Section 7. Paragraph (n) of subsection (2) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

(2) DEFINITIONS.—As used in this section, the term:

(n) "Temporary residence" means a place where the person

abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. The term also includes a vacation rental, as defined in s. 509.242(1)(c), where a person lodges for 24 hours or more.

Section 8. Subsection (12) of section 159.27, Florida Statutes, is amended to read:

159.27 Definitions.—The following words and terms, unless the context clearly indicates a different meaning, shall have the following meanings:

(12) "Public lodging or restaurant facility" means property used for any public lodging establishment as defined in s. 509.242 or public food service establishment as defined in s. 509.013 ~~s. 509.013(5)~~ if it is part of the complex of, or necessary to, another facility qualifying under this part.

Section 9. Paragraph (jj) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following

are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(jj) *Complimentary meals.*—Also exempt from the tax imposed by this chapter are food or drinks that are furnished as part of a packaged room rate by any person offering for rent or lease any transient living accommodations as described in s. 509.013 ~~s. 509.013(4)(a)~~ which are licensed under part I of chapter 509

and which are subject to the tax under s. 212.03, if a separate charge or specific amount for the food or drinks is not shown. Such food or drinks are considered to be sold at retail as part of the total charge for the transient living accommodations. Moreover, the person offering the accommodations is not considered to be the consumer of items purchased in furnishing such food or drinks and may purchase those items under conditions of a sale for resale.

Section 10. Paragraph (b) of subsection (4) of section 316.1955, Florida Statutes, is amended to read:

316.1955 Enforcement of parking requirements for persons who have disabilities.—

(4)

(b) Notwithstanding paragraph (a), a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ which provides parking in designated areas for persons who have disabilities may allow any vehicle that is transporting a person who has a disability to remain parked in a space reserved for persons who have disabilities throughout the period the theme park is open to the public for that day.

Section 11. Subsection (5) of section 404.056, Florida Statutes, is amended to read:

404.056 Environmental radiation standards and projects; certification of persons performing measurement or mitigation services; mandatory testing; notification on real estate

documents; rules.—

(5) NOTIFICATION ON REAL ESTATE DOCUMENTS.—Notification shall be provided on at least one document, form, or application executed at the time of, or before ~~prior to~~, contract for sale and purchase of any building or execution of a rental agreement for any building. Such notification must ~~shall~~ contain the following language:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

The requirements of this subsection do not apply to any residential transient occupancy, as described in s. 509.013 ~~s. 509.013(12)~~, provided that such occupancy is 45 days or less in duration.

Section 12. Subsection (6) of section 477.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.—

(6) A license is not required of any individual providing makeup or special effects services in a theme park or

entertainment complex to an actor, stunt person, musician, extra, or other talent, or providing makeup or special effects services to the general public. The term "theme park or entertainment complex" has the same meaning as in s. 509.013 ~~s. 509.013(9)~~.

Section 13. Paragraph (b) of subsection (2) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(2)

(b) Within a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, the bathrooms are not required to be in the same building as the public food service establishment, so long as they are reasonably accessible.

Section 14. Paragraph (b) of subsection (5) of section 553.5041, Florida Statutes, is amended to read:

553.5041 Parking spaces for persons who have disabilities.—

(5) Accessible perpendicular and diagonal accessible parking spaces and loading zones must be designed and located to conform to ss. 502 and 503 of the standards.

(b) If there are multiple entrances or multiple retail stores, the parking spaces must be dispersed to provide parking at the nearest accessible entrance. If a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ provides parking in several lots or areas from which access to

the theme park or entertainment complex is provided, a single lot or area may be designated for parking by persons who have disabilities, if the lot or area is located on the shortest accessible route to an accessible entrance to the theme park or entertainment complex or to transportation to such an accessible entrance.

Section 15. Paragraph (b) of subsection (5) of section 559.955, Florida Statutes, is amended to read:

559.955 Home-based businesses; local government restrictions.—

(5) The application of this section does not supersede:

(b) Local laws, ordinances, or regulations related to transient public lodging establishments, as defined in s. 509.013 ~~s. 509.013(4)(a)1.~~, that are not otherwise preempted under chapter 509.

Section 16. Subsection (2) of section 705.17, Florida Statutes, is amended to read:

705.17 Exceptions.—

(2) Sections 705.1015-705.106 do not apply to any personal property lost or abandoned on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply

with s. 705.185.

Section 17. Section 705.185, Florida Statutes, is amended to read:

705.185 Disposal of personal property lost or abandoned on the premises of certain facilities.—When any lost or abandoned personal property is found on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with this section, any lost or abandoned property must be delivered to such owner or operator, who must take charge of the property and make a record of the date such property was found. If the property is not claimed by its owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the owner or operator of the premises, the owner or operator of the premises may not sell and must dispose of the property or donate it to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code for sale or other disposal as the charitable institution deems appropriate. The rightful owner of the property may reclaim the property from the owner or operator of the premises at any time before the disposal or donation of the property in accordance with this section and the established

policies and procedures of the owner or operator of the premises. A charitable institution that accepts an electronic device, as defined in s. 815.03(9), access to which is not secured by a password or other personal identification technology, shall make a reasonable effort to delete all personal data from the electronic device before its sale or disposal.

Section 18. Section 717.1355, Florida Statutes, is amended to read:

717.1355 Theme park and entertainment complex tickets.—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

Section 19. Subsection (8) of section 877.24, Florida Statutes, is amended to read:

877.24 Nonapplication of s. 877.22.—Section 877.22 does not apply to a minor who is:

(8) Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~.

Section 20. The application of this act does not supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes, cooperative

document adopted pursuant to chapter 719, Florida Statutes, or declaration or declaration of covenant adopted pursuant to chapter 720, Florida Statutes.

Section 21. (1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing s. 212.03, Florida Statutes, including establishing procedures to facilitate the remittance of taxes.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section expires January 1, 2025.

Section 22. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

REGULATORY REFORM SUBCOMMITTEE

HB 325 by Rep. Fisher
Vacation Rentals

AMENDMENT SUMMARY
January 27, 2022

Amendment 1 by Rep. Fischer (lines 366-396):

- Removes the $50 vacation rental registration fee;
- Allows existing vacation rental registration fees to continue and prohibits such fees from being increased; and
- Requires local governments to waive the fine for failure of a vacation rental to register with a local vacation rental registration program if the requirement to register is satisfied within 30 days.

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: Regulatory Reform Subcommittee

Representative Fischer offered the following:

Amendment (with title amendment)

Remove lines 366-396 and insert:

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and

the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b)1. A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is amended to be less restrictive or to comply with the local registration requirements provided in this paragraph. Notwithstanding paragraph (a), a local law, ordinance, or regulation may require the registration of vacation rentals with a local vacation rental registration program. Local governments may adopt a vacation rental registration program pursuant to subparagraph 3. and impose a fine for failure to register under the vacation rental registration program. However, a local government must waive the fine if the vacation rental becomes registered under a vacation rental registration program within 30 days after receiving notice of the fine and deficiency.

2. A local government may not charge a fee for processing a registration application, except for local governments that adopted vacation rental registration fees on or before the effective date of this act, which may be amended to be reduced or eliminated, but may not be increased. A local law, ordinance, or regulation may not require renewal of a registration more than once per year. However, if there is a

change of ownership, the new owner may be required to submit a new application for registration.

Between lines 814 and 815, insert:

Section 22. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

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

Remove lines 17-19 and insert:
programs and impose fines for failure to register; authorizing the waiver of such fines; authorizing local governments to charge fees for processing registration applications; providing an exception; specifying

Remove line 78 and insert:
rulemaking authority; providing a directive to the Divisoin of Law Revision; providing effective dates.

HB 705

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 705 Mergers and Acquisitions Reporting
SPONSOR(S): Grall
TIED BILLS: **IDEN./SIM. BILLS:** SB 1112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Wright	Anstead
2) Appropriations Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Healthy competition in economic markets keeps prices low and quality high for consumers. When one entity becomes too strong, it can stifle competition, leading to higher prices and harm to consumers. Antitrust law exists to protect consumers by promoting competition in the marketplace.

The U.S. Congress, and many states, has passed several laws to help promote competition by outlawing unfair methods of competition. One such law is the Hart-Scott-Rodino Act (HSRA), which requires entities to provide certain federal government agencies with information about large mergers and acquisitions before they occur, in a notification form called the "Notification and Report Form for Certain Mergers and Acquisitions" (HSRA filing).

Currently, the Florida Office of the Attorney General (OAG) does not receive notice of HSRA filings unless they are voluntarily provided by the combining entities or discovered through public sources. In addition, such sources are not generally made publicly available by the federal government.

The bill requires any entity conducting business in the state to provide notice to the OAG that it has submitted an HSRA filing at the same time the HSRA filing is filed with the federal government.

The bill provides an effective date of July 1, 2022.

The bill will not have a fiscal impact on local governments, and may have a minimal, indeterminate fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Antitrust Law

Healthy competition in economic markets keeps prices low and quality high for consumers. When one entity becomes too strong or entertains unfair methods of competition, it can stifle competition, leading to higher prices and harm to consumers. Antitrust law exists to protect competition, but not necessarily individual competitors, in economic markets, based on the idea that an unregulated market will lead to the creation of coercive monopolies.[1]

Federal antitrust law includes the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act. These laws are enforced in federal district court[2] by the U.S. Department of Justice (DOJ), the Federal Trade Commission (FTC), state Attorneys General, and private plaintiffs. Antitrust case law is well-developed, and it is often difficult to distinguish aggressive, pro-competitive conduct—which is legal—from predatory, anti-competitive conduct.[3]

The Clayton Act[4] prohibits specific business actions, including mergers and acquisitions, which may substantially lessen competition. To determine whether a merger violates the Clayton Act, a court must decide whether the merger is likely to create an appreciable danger of anticompetitive effects. [5]

The Sherman Antitrust Act[6] prohibits any attempt to restrain trade or form a monopoly in a predatory manner. A monopoly has two elements: (1) monopoly power and (2) willful acquisition or maintenance of that power, as opposed to power naturally resulting from a superior product, acumen, or historic accident. Penalties for violating the Sherman Act include up to ten years' imprisonment and a fine up to $100 million for a corporation or $1 million for any other person.[7]

The Florida Antitrust Act of 1980[8] is intended to complement federal antitrust law in order to foster effective competition. Implemented by the Office of the Attorney General (OAG), it essentially mirrors the federal Sherman Act, and prohibits:[9]

- Every contract, combination, or conspiracy in restraint of trade or commerce;[10] and
- Monopolization or attempted monopolization of any part of trade or commerce.[11]

A Florida antitrust law violation is punishable by up to three years' imprisonment and fines up to $1 million for a corporation and $100,000 for any other person.[12] There is also a private right of action for any person injured by certain antitrust violations.[13]

Florida law does not provide a corollary to the federal Clayton Act, which specifically targets mergers and acquisitions that may lessen competition. However, the Attorney General considers the Florida

[1] John J. Miles, *Antitrust Primer*, 20140513 AHLA Seminar Papers 1 (2014) (The purpose of antitrust law is to "protect and promote competition as the primary method by which this country allocates scarce resources to maximize the welfare of consumers.").
[2] Steven Fox, *Litigation Under Florida's Deceptive and Unfair Trade Practices Act, the Florida Antitrust Act, or Federal Antitrust Statutes*, The Florida Bar, Business Litigation in Florida (2017) (Federal district courts have exclusive jurisdiction over federal antitrust actions).
[3] Animesh Ballabh, *Antitrust Law: An Overview,* 88 J. Pat. & Trademark Off. Soc'y 877 (2006); John J. Miles, Antitrust Primer, 20140513 AHLA Seminar Papers 1 (2014).
[4] 15 U.S.C. § 18;
[5] *See also Olin Corp. v. FTC*, 986 F.2d 1295, 1305 (9th Cir. 1993) (discussing how plaintiff's establishment of a prima facie case on statistical evidence is first step in a court's analysis); *Chicago Bridge & Iron Co. v. FTC*, 534 F.3d 410, 423 (5th Cir. 2008).
[6] 15 U.S.C. §§ 1 et seq.
[7] 15 U.S.C. § 1.
[8] Ss. 542.15 – 542.36, F.S.
[9] S. 542.16, F.S.
[10] S. 542.18, F.S.
[11] S. 542.19, F.S.
[12] S. 542.21, F.S.
[13] Ss. 542.21 and 542.22, F.S.

Antitrust Act of 1980 and the Florida Deceptive and Unfair Trade Practices Act broad enough to encompass those types of violations.[14]

Premerger Notification Program

The Hart-Scott-Rodino Act[15] (HSRA), an amendment to the Clayton Act, established the federal Premerger Notification Program (PNP), which provides the FTC and the DOJ with information about large mergers and acquisitions before they occur.[16] The PNP was established to avoid some of the difficulties and expense that the enforcement agencies encounter when they challenge anticompetitive acquisitions after they have occurred. Prior review under the PNP enables the FTC and the DOJ to determine which acquisitions are likely to be anticompetitive and to challenge them at a time when remedial action is most effective.[17]

The parties to certain proposed transactions must submit premerger notification to the FTC and DOJ. Premerger notification involves completing the "Notification and Report Form for Certain Mergers and Acquisitions" (HSRA filing) with information about each company's business.[18]

HSRA requires persons contemplating proposed business transactions that satisfy certain size criteria to report their intentions to the enforcement agencies before consummating the transaction. If the proposed transaction is reportable, then both the acquiring person and the person whose business is being acquired must submit information about their respective business operations to the enforcement agencies and wait a specific period of time before consummating the proposed transaction. During that waiting period, the enforcement agencies review the antitrust implications of the proposed transaction. Whether a particular transaction is reportable is determined by application of HSRA, the related rules, and formal and informal staff interpretations.

As a general matter, HSRA and the related rules require both acquiring and acquired persons to file notifications under the PNP if all of the following conditions are met:[19]

- As a result of the transaction, the acquiring person will hold an aggregate amount of voting securities, non-corporate interests (NCI) and/or assets of the acquired person valued in excess of $200 million (as adjusted), regardless of the sales or assets of the acquiring and acquired persons ; or
- As a result of the transaction, the acquiring person will hold an aggregate amount of voting securities, NCI and/or assets of the acquired person valued in excess of $50 million (as adjusted) but at $200 million (as adjusted) or less; and
- One person has sales or assets of at least $100 million (as adjusted); and
- The other person has sales or assets of at least $10 million (as adjusted).

Florida's Role in Premerger Actions

State Attorneys General, including the Florida OAG, have power under the Clayton Act to independently sue to enjoin a merger or acquisition. But, according to industry experts, State Attorneys General do not have access to the same investigative tools as federal enforcers, such as automatically receiving HSRA filings. For this reason, state AGs more typically allow the federal agencies to take the lead in merger investigations and enforcement actions.

The HSRA contains confidentiality provisions[20] that prohibit the federal agencies from sharing information gathered pursuant to the HSR Act with state AGs absent the consent of the merging parties. According to industry practitioners, in order to avoid the burden of having to comply with

[14] Florida Attorney General, *Antitrust*, http://myfloridalegal.com/antitrust (last visited Jan. 25, 2022).
[15] 15 U.S.C. § 18a.
[16] Federal Trade Commission, *Premerger Notification Program*, Premerger Notification Program | Federal Trade Commission (ftc.gov) (last visited Jan. 25, 2022).
[17] FTC Premerger Notification Office, *Introductory Guide I*, p. 1 (Mar. 2009), Introductory Guide 1- What is the Premerger Notification Program? An Overview (ftc.gov) (last visited Jan. 25, 2022).
[18] FTC, *supra* note 19.
[19] FTC PNO, *supra* note 20 at 2-3.
[20] 15 U.S.C. § 18A(h).

multiple demands for information, the parties generally provide such consent. Upon receiving consent from the merging parties, the federal agencies are permitted to provide state AGs with copies of any issued civil investigative demands or second requests.[21]

The OAG has expressed that receiving notices of these transactions prior to their consummation will enable the OAG to stop anticompetitive transactions and preserve competition.[22]

Effect of the Bill

The bill requires any entity conducting business in the state to provide notice to the OAG that it has submitted HSRA filings at the same time the HSRA filing is filed with the federal government.

B. SECTION DIRECTORY:

Section 1: Provides filing requirements for certain large entities participating in a merger or acquisition.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Receiving HSRA filings may cause an increased workload. There is likely a minimal, though indeterminate, fiscal impact.[23]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

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.

[21] Bruning Law Group, *State Attorneys General and Their Influence on Merger Enforcement*, State Attorneys General and Their Influence on Merger Enforcement - Bruning Law Group (last visited Jan. 25, 2022).
[22] Office of the Attorney General, Agency Analysis of 2022 House Bill 705, Jan. 25, 2022).
[23] *Id*.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to mergers and acquisitions reporting; creating s. 542.275, F.S.; requiring certain entities to submit written notice of a specified filing to the Office of the Attorney General relating to certain transactions; providing an effective date.

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

Section 1. Section 542.275, Florida Statutes, is created to read:

542.275 Mergers and acquisitions reporting; notice required.—Any entity conducting business in the state which is required to file the Notification and Report Form for Certain Mergers and Acquisitions pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. s. 18a(a), shall provide written notice of such filing to the Office of the Attorney General at the same time that notice is filed with the Federal Government.

Section 2. This act shall take effect July 1, 2022.

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

HB 1227

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1227 Online Marketplace Transparency
SPONSOR(S): Toledo and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 944

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Wright	Anstead
2) Judiciary Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

As e-commerce grows, the sale of counterfeit and stolen goods alongside authentic products continues to be a concern. E-commerce platforms may enable counterfeiters or thieves to produce or sell products at lower prices, while also reaching a larger number of potential customers.

The bill creates s. 559.953, F.S., which establishes that an online marketplace must require high-volume third-party sellers (HVTPS) to provide the online marketplace with verification and disclosure information. Additionally, an online marketplace must require HVTPS with an aggregate total of $20,000 or more in annual gross revenues on its online platform to provide consumers with disclosure information.

The bill requires an online marketplace to provide consumers with a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace and a message encouraging individuals seeking to purchase products to report suspicious activity to the online marketplace.

The bill provides that a violation of s. 559.953, F.S., constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, and the Department of Legal Affairs (DLA) may adopt rules to collect and verify the required information. Additionally, regulation under s. 559.953, F.S., is preempted to DLA.

The bill takes effect July 1, 2022.

The bill does not appear to affect local governments and may have an indeterminate fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.[1] The FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.[2] The FDUTPA is based on federal law, and s. 501.204(2), F.S., provides that it is the intent of the Legislature that due consideration and great weight must be given to the interpretations of the Federal Trade Commission and the federal courts relating to section 5 of the Federal Trade Commission Act.[3]

The State Attorney or the Department of Legal Affairs (DLA) under the Attorney General may bring actions when it is in the public interest on behalf of consumers or governmental entities.[4] The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction.[5] DLA has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[6] Consumers may also file suit through private actions.[7]

DLA and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to $10,000 per willful violation.[8]

Remedies for private parties are limited to the following:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.[9]

[1] Ch. 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.
[2] *See* ss. 501.202 & 501.203, F.S.
[3] *See* s 501.204(2), F.S.
[4] *See* ss. 501.203(2), 501.206, and 501.207, F.S.
[5] S. 501.203(2), F.S.
[6] *Id.*
[7] S. 501.211, F.S.
[8] Ss. 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.
[9] Section 501.211(1) and (2), F.S.

Federal Unfair and Deceptive Trade Practices

The Federal Trade Commission's (FTC's) unfair and deceptive trade practices regulations prohibit unfair[10] or deceptive[11] acts or practices in or affecting commerce.[12] To enforce these regulations, the FTC takes law enforcement actions, provides consumer and business education, issues reports and policy guidance, leads workshops, and participates in other forums.[13]

The FTC provides "online shopping" guidance to consumers.[14] The guidance includes how to confirm an online seller's physical address and phone number, scrutinize details provided about a product, paying with credit card, keep records of any transaction, and protect personal information.[15] Additionally, the FTC offers resources on how to compare products online, as well as where to go to report online shopping fraud.[16]

E-commerce Marketplace

As e-commerce grows, the sale of counterfeit goods alongside authentic products continues to be a concern.[17] In 2020, the Department of Homeland Security published a report detailing potential strategies and policies to combat the trade of counterfeit goods.[18] According to the report, e-commerce platforms enable counterfeiters to produce products at lower prices, while also reaching a larger number of potential customers.[19] The report points to a scenario where third-party marketplace websites contain photos of the real product, fake reviews of the counterfeit product, and other information designed to mislead consumers.[20]

The report also discusses how the online marketplace is changing consumer attitudes and perceptions.[21] For instance, shopping online makes it harder for consumers to identify what the report calls traditional "red flag" indicators, which has the potential to cause safety risks when consumers rely on false claims that certain products have health or safety certificates.[22] The report points out that this dynamic creates a lack of consumer trust, as well as harming the reputation of brands or businesses.[23]

In 2019, the Organization for Economic Cooperation and Development (OECD) in partnership with the EU Intellectual Property Office also published a study detailing trends in counterfeit and pirated

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[10] An "unfair" practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. *See* 15 U.S.C. Sec. 45(n).
[11] A "deceptive" practice involves a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances. *See* FTC Policy Statement on Deception (Oct. 14, 1983) *available at* https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf (last visited Jan. 14, 2022). *See also* Federal Trade Commission, *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority* (revised, May 2021) *available at* https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority (last visited Jan. 14, 2022).
[12] 15 U.S.C. s. 45(a)(1).
[13] Federal Trade Commission, *Protecting Consumers from Fraud and Deception*, *available at* https://www.ftc.gov/news-events/media-resources/truth-advertising/protecting-consumers (last visited Jan. 14, 2022).
[14] *See* Federal Trade Commission, *Shopping Online*, *available at* https://www.consumer.ftc.gov/articles/0020-shopping-online (last visited Jan. 14, 2022).
[15] *Id*.
[16] *Id. See also* Federal Trade Commission, *Comparison Shopping, available at* https://www.consumer.ftc.gov/shopping (last visited Jan. 14, 2022).
[17] *See* Department of Homeland Security, *Combating Trafficking in Counterfeit and Pirated Goods* (Jan. 24, 2020), *available at* https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf (last visited Jan. 14, 2022).
[18] *Id*.
[19] *Id*. at 21.
[20] *Id.* at 22.
[21] *Id*. at 14.
[22] *Id*. at 15.
[23] *Id*.

goods.[24] According to the OECD, trade in fake goods infringe on trademarks and copyright, while also potentially harming the health and safety of consumers.[25] The OECD reported that counterfeit and pirated goods were steadily rising, and in March of 2019, accounted for 3.3 percent of global trade.[26]

Industry Self-Regulation

Because there is documented consumer harm from third-party sellers on online marketplaces, some online marketplaces have started new programs and requirements for verifying third-party sellers in the interests of self-regulation. For example, Amazon is testing using video calls to verify third-party sellers as it attempts to minimize the amount of fraudulent accounts and listings on its platform. The live verification initiative initially used in-person meetings when it began, but pivoted to video conferencing as the COVID-19 pandemic made social distancing measures necessary. Amazon says its existing verification process for third-party sellers uses a combination of machine learning and human review to remove suspected bad actors. The company said these processes stopped 2.5 million accounts from listing items for sale in 2019.[27]

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.[28]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[29] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[30] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[31]

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.[32] Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.[33] Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.[34] Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.[35]

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[24] *See* Organization for Economic Cooperation and Development, *Trends in Trade in Counterfeit and Pirated Goods* (2019), *available at* https://read.oecd-ilibrary.org/trade/trends-in-trade-in-counterfeit-and-pirated-goods_g2g9f533-en#page1 (last visited Jan. 24, 2022).

[25] *See* Organization for Economic Cooperation and Development, *Trade in Fake Goods is now 3.3% of World Trading and Rising* (March 18, 2019), *available at* www.oecd.org/newsroom/trade-in-fake-goods-is-now-33-of-world-trade-and-rising.htm (last visited Jan. 24, 2022).

[26] *Id*.

[27] John Porter, *Amazon testing video calls to verify third-party sellers*, TheVerge.com, https://www.theverge.com/2020/4/27/21238026/amazon-seller-verification-video-calling-fraud-third-party-sellers (last visited Jan. 25, 2022).

[28] *See* James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

[29] *See City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

[30] *Mulligan*, 934 So.2d at 1243.

[31] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

[32] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).

[33] *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

[34] *Id.*

[35] *Sarasota Alliance for Fair Elections, Inc.,* 28 So.3d at 886.

Effect of the Bill

The bill provides the following definitions:

- **"Consumer product"** means a product that is used or bought for use primarily for personal, family, or household purposes.
- **"High-volume third-party seller"** (HVTPS) means a participant in an online marketplace that is a third-party seller and that, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products resulting in the accumulation of an aggregate total of $5,000 or more in gross revenues. Only sales or transactions made through the online marketplace for which payment was processed by the online marketplace, either directly or through the seller's payment processer, count towards the calculation for the number of discrete sales or transactions or the gross revenues.
- **"Online marketplace"** means any consumer-directed electronically based or accessed platform that:
    - Includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the U.S.;
    - Is used by one or more third-party sellers for such purposes; and
    - Has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.
- **"Seller"** means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace.
- **"Third-party seller"** means any seller, independent of an operator, a facilitator, or an owner of an online marketplace, that sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace. The term does not include, with respect to an online marketplace:
    - A seller that operates the online marketplace;
    - A business entity that has made available to the general public the entity's name, business address, and working contact information;
    - A business entity with an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; or
    - A business entity that has provided to the online marketplace identifying information that has been verified.
- **"Verify"** means to confirm information and documentation provided to an online marketplace by the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided which correspond to the seller or an individual acting on the seller's behalf are valid, not misappropriated, and not falsified.

The bill **requires an online marketplace** to:

- Require that any HVTPS provide it with all of the following information within 10 business days after qualifying as a HVTPS:
    - **Deposit account information** from a financial institution, or if none, such seller must provide the name of the payee for payments issued by the online marketplace to the HVTPS, and the information must be confirmed by the online marketplace or by another third party contracted by the online marketplace.
    - **Contact information**, including all of the following:
        - A valid e-mail address and working phone number.
        - If the HVTPS is an individual, a copy of a valid government-issued photo identification for the individual which includes the individual's name and physical address.
        - If the HVTPS is not an individual, either a copy of a government-issued photo identification for an individual acting on behalf of such seller which includes such individual's name and physical address or a copy of a government-issued record

or tax document that includes the business name and physical address of the HVTPS.
    - **A business tax identification number** or, if the HVTPS does not have a business tax identification number, a taxpayer identification number.
- Verify the information the HVTPS provides under this subsection within 10 business days after receiving such information.
    - If the HVTPS provides any changes to the information, the online marketplace must verify such changes within 10 business days after receiving the information.
    - If a HVTPS provides a copy of a valid government-issued tax document, the information contained within such tax document shall be presumed verified as of the date of issuance of such document.
- Notify each HVTPS on the online marketplace, on at least an annual basis, that such seller must inform the online marketplace of any changes to the information previously provided by the seller within 10 business days after receiving the notification. The notification must require the HVTPS to either electronically certify that the HVTPS's information is unchanged or provide changes to the information as necessary.
    - If the online marketplace becomes aware that a HVTPS has not certified that such information is unchanged or provided such changed information within 10 business days after receiving such notification, the online marketplace must suspend the selling privileges of the HVTPS until such seller provides such certification or changed information.
- Disclose to consumers in a conspicuous manner on the product listing, through a conspicuously placed link on the product listing, or in the order confirmation message or other document or communication made to the consumer after the purchase is finalized and in the consumer's account transaction history, all of the following information of any HVTPS with an aggregate total of **$20,000 or more in annual gross revenues** on its online platform:
    - The full name of the HVTPS.
    - The full physical address of the HVTPS.
        - If the full physical address of the HVTPS is the primary residential address of such HVTPS, only the city, state, and country of the HVTPS is required to be disclosed.
    - Contact information for the HVTPS, including a working telephone number and working e-mail address to allow for direct, unhindered communication with the HVTPS.
        - If the only telephone number of the HVTPS is the personal telephone number of the HVTPS, then only the working e-mail address is required to be disclosed or the online marketplace must provide other means of electronic messaging to contact such seller.
    - The identification of any seller that supplies the consumer product to the consumer upon purchase, if such seller is different than the HVTPS listed on the consumer product listing before the purchase.

If an online marketplace becomes **aware** that a HVTPS seller has made a **false representation** to the online marketplace in order to restrict access to their full physical address, telephone number, or e-mail address, the bill requires the online marketplace to, after providing the seller with written or electronic notice, require the full disclosure of the HVTPS's full physical address, telephone number, and e-mail address.

- If such information is not disclosed within 10 business days after notification, the online marketplace must suspend the selling privileges of the HVTPS on the online marketplace until the required information is disclosed.

The bill requires an online marketplace to provide to consumers, in a conspicuous manner on the consumer product listing of any HVTPS, a **reporting mechanism** that allows for electronic and telephonic reporting of **suspicious marketplace activity** to the online marketplace and a message encouraging individuals seeking goods for purchase to report suspicious activity to the online marketplace.

The bill does not prevent an online marketplace from providing any additional measures, electronic or otherwise, that it deems necessary to prevent the sale of fraudulent, stolen, or counterfeit consumer products on its platform.

The bill provides that a person who violates the bill violates of FDUTPA, and is subject to FDUTPA penalties and remedies.

The bill provides that the regulation of the requirement for online marketplaces to verify information from HVTPS on a one-time or ongoing basis and to verify disclosure of information to consumers is preempted to DLA, and it allows DLA to adopt rules with respect to collecting and verifying information under the bill, provided that such rules are limited to what is necessary to collect and verify such information. A local governmental entity may not establish, mandate, or otherwise require the verification or disclosure of such information.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Creates s. 559.953, F.S.; providing requirements for online marketplaces with respect to their relationships and dealing with certain third-party sellers.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may increase the number of FDUTPA actions taken by DLA, which may increase civil penalties collected by DLA.

2. Expenditures:

   The bill may increase the number of FDUTPA actions taken by DLA, which may increase the related FDUTPA workload of DLA.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may provide buyers with increased security during online sales transactions through online marketplaces. This may be beneficial to consumers and save consumers money by preventing consumers from being deceived into purchasing fake or counterfeit products.

The bill will require online marketplaces to implement procedures to add and verify certain third party identifying information to their platforms, as well as provide a consumer reporting mechanism. This may save online marketplaces time and money related to investigating fraudulent sellers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:

Although the Act allows individuals and DLA to bring an action under FDUTPA, it is uncertain whether they would be able to successfully bring such an action because Florida courts may not have jurisdiction over such bad actors or respondents.

For a court to exercise jurisdiction over a respondent, it must have subject matter jurisdiction and personal jurisdiction, which is determined by the court based on the respondent's contacts with the state.[36] A non-resident respondent may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida's long-arm statute.[37] Alternately, the non-resident respondent may be subject to a Florida court's personal jurisdiction because he or she has minimum contacts with the state that are otherwise unrelated to the matter that brings him or her into court.[38] Whether a non-resident online marketplace that shows certain third-party sellers into Florida has sufficient minimum contacts with the state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.

B. RULE-MAKING AUTHORITY:

The bill provides that DLA may adopt rules with respect to collecting and verifying information under the bill, provided that such rules are limited to what is necessary to collect and verify such information.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[36] *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).
[37] *Id*; S. 48.193, F.S.
[38] *Caiazzo*, 73 So. 3d 245, 250.

A bill to be entitled

An act relating to online marketplace transparency; creating s. 559.953, F.S.; defining terms; requiring online marketplaces to require high-volume third-party sellers using their service to provide certain information to the online marketplace within a specified timeframe; requiring the online marketplace to verify such information, or changes to such information, within a specified timeframe; providing that information on valid government-issued tax documents is presumed verified as of the issuance date; requiring an online marketplace to update and require certification of the updated information at least annually; requiring the online marketplace to suspend certain sellers who do not provide such a certification or updated information; requiring online marketplaces to disclose certain information in a specified manner; requiring disclosure of suppliers; providing for enforcement; authorizing the Department of Legal Affairs to adopt rules; preempting the regulation of the verification and disclosure of such information to the department; providing an effective date.

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

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

Section 1. Section 559.953, Florida Statutes, is created to read:

559.953 Disclosure of information by online marketplaces.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Consumer product" means a product that is used or bought for use primarily for personal, family, or household purposes.

(b) "High-volume third-party seller" means a participant in an online marketplace that is a third-party seller and that, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products resulting in the accumulation of an aggregate total of $5,000 or more in gross revenues. Only sales or transactions made through the online marketplace for which payment was processed by the online marketplace, either directly or through the seller's payment processer, count towards the calculation for the number of discrete sales or transactions or the gross revenues.

(c) "Online marketplace" means any consumer-directed electronically based or accessed platform that:

1. Includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States;

2. Is used by one or more third-party sellers for such purposes; and

3. Has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

(d) "Seller" means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace.

(e) "Third-party seller" means any seller, independent of an operator, a facilitator, or an owner of an online marketplace, that sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace. The term does not include, with respect to an online marketplace:

1. A seller that operates the online marketplace;

2. A business entity that has made available to the general public the entity's name, business address, and working contact information;

3. A business entity with an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; or

4. A business entity that has provided to the online marketplace identifying information that has been verified.

(f) "Verify" means to confirm information and

documentation provided to an online marketplace by the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided which correspond to the seller or an individual acting on the seller's behalf are valid, not misappropriated, and not falsified.

(2) VERIFICATION.—

(a) An online marketplace shall require that any high-volume third-party seller on the online marketplace provide the online marketplace with all of the following information within 10 business days after qualifying as a high-volume third-party seller:

1. Deposit account information from a financial institution. If the high-volume third-party seller does not have deposit account information at a financial institution, such seller must provide the online marketplace with the name of the payee for payments issued by the online marketplace to the high-volume third-party seller, and the information must be confirmed by the online marketplace or by another third party contracted by the online marketplace.

2. Contact information, including all of the following:

a. A valid e-mail address and working phone number.

b. If the high-volume third-party seller is an individual, a copy of a valid government-issued photo identification for the individual which includes the individual's name and physical

address.

c. If the high-volume third-party seller is not an individual, either a copy of a government-issued photo identification for an individual acting on behalf of such seller which includes such individual's name and physical address or a copy of a government-issued record or tax document that includes the business name and physical address of the high-volume third-party seller.

3. A business tax identification number or, if the high-volume third-party seller does not have a business tax identification number, a taxpayer identification number.

(b) The online marketplace shall verify the information the high-volume third-party seller provides under this subsection within 10 business days after receiving such information. If the high-volume third-party seller provides any changes to the information, the online marketplace must verify such changes within 10 business days after receiving the information. If a high-volume third-party seller provides a copy of a valid government-issued tax document, the information contained within such tax document shall be presumed verified as of the date of issuance of such document.

(c) The online marketplace shall, on at least an annual basis, notify each high-volume third-party seller on the online marketplace that such seller must inform the online marketplace of any changes to the information previously provided by the

seller within 10 business days after receiving the notification. The notification must require the high-volume third-party seller to either electronically certify that the high-volume third-party seller's information is unchanged or provide changes to the information as necessary. If the online marketplace becomes aware that a high-volume third-party seller has not certified that such information is unchanged or provided such changed information within 10 business days after receiving such notification, the online marketplace must suspend the selling privileges of the high-volume third-party seller until such seller provides such certification or changed information.

(3) DISCLOSURE.—

(a) An online marketplace shall disclose to consumers in a conspicuous manner on the product listing, through a conspicuously placed link on the product listing, or in the order confirmation message or other document or communication made to the consumer after the purchase is finalized and in the consumer's account transaction history, all of the following information of any high-volume third party seller with an aggregate total of $20,000 or more in annual gross revenues on its online platform:

1. The full name of the high-volume third-party seller.

2. The full physical address of the high-volume third-party seller. If the full physical address of the high-volume third-party seller is the primary residential address of such

high-volume third-party seller, only the city, state, and country of the high-volume third-party seller is required to be disclosed.

3. Contact information for the high-volume third-party seller, including a working telephone number and working e-mail address to allow for direct, unhindered communication with the high-volume third-party seller. If the only telephone number of the high-volume third-party seller is the personal telephone number of the high-volume third-party seller, then only the working e-mail address is required to be disclosed or the online marketplace must provide other means of electronic messaging to contact such seller.

4. The identification of any seller that supplies the consumer product to the consumer upon purchase, if such seller is different than the high-volume third-party seller listed on the consumer product listing before the purchase.

(b) If an online marketplace becomes aware that a high-volume third-party seller has made a false representation to the online marketplace in order to restrict access to the full physical address, telephone number, or e-mail address required in paragraph (a), the online marketplace must, after providing the seller with written or electronic notice, require the full disclosure of the high-volume third-party seller's full physical address, telephone number, and e-mail address. If such information is not disclosed within 10 business days after

notification, the online marketplace must suspend the selling privileges of the high-volume third-party seller on the online marketplace until the required information is disclosed.

(c) An online marketplace shall provide to consumers, in a conspicuous manner on the consumer product listing of any high-volume third-party seller, a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace and a message encouraging individuals seeking goods for purchase to report suspicious activity to the online marketplace.

(d) This subsection does not prevent an online marketplace from providing any additional measures, electronic or otherwise, that it deems necessary to prevent the sale of fraudulent, stolen, or counterfeit consumer products on its platform.

(4) ENFORCEMENT.—A violation of this section constitutes a violation of the Deceptive and Unfair Trade Practices Act under part II of chapter 501. A person who violates this section is subject to the penalties and remedies provided therein.

(5) RULES.—The Department of Legal Affairs may adopt rules with respect to collecting and verifying information under this section, provided that such rules are limited to what is necessary to collect and verify such information.

(6) PREEMPTION.—The regulation of the requirement for online marketplaces to verify information from high-volume third-party sellers on a one-time or ongoing basis or disclose

information to consumers is preempted to the department. A local governmental entity may not establish, mandate, or otherwise require the verification or disclosure of such information.

Section 2. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1233 Online Training for Private Security Officers
SPONSOR(S): Fine
TIED BILLS: **IDEN./SIM. BILLS:** SB 1474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Thompson	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS), Division of Licensing, is responsible for the licensure and regulation of private investigation, private security and recovery services, including Class "D" unarmed Security Officer and Class "G" Statewide Firearm license applicants.

An applicant for a Class "D" unarmed Security Officer license must submit proof of successful completion of a minimum of 40 hours of professional training at a Class "DS" Security Officer School or Training Facility licensed by DACS. A Class "D" Security Officer is not permitted to carry a firearm unless such licensee also obtains a Class "G" Statewide Firearm license.

An applicant for a Class "G" Statewide Firearm license must satisfy minimum training criteria for firearms established by DACS rule, including, but not limited to, **28 hours of range and classroom training** taught and administered by a Class "K" Firearms Instructor licensee; however, **no more than 8 hours of such training may consist of range training**.

The bill:

- Allows 21 of the 28 hour training requirement for a Class "G" Statewide Firearm license to be conducted in-person or online instead of in the classroom, and no more than 8 hours may consist of range training.
- Allows the 40 hour training requirement for Class "D" Security Officer licensure to be conducted in-person or online.
- Requires DACS to verify an applicant's identity, attendance, and successful completion of the training.
- Provides that an online training course must:
  - Include security questions to ensure the applicant is using the computer or mobile device.
  - Set a minimum amount of time that each applicant must spend on each screen.
  - Include randomized test questions.

The bill also requires an online training course for a Class "D" or "G" license to be attached to and conducted by a licensed school or training facility with a physical location. A firearms instructor teaching an online training course must work for a licensed school or training facility that has a minimum $1 million insurance policy and is registered, permitted, or licensed by the Department of Business and Professional Regulation (DBPR).

The bill does not appear to have a significant fiscal impact on state or local government.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Department of Agriculture and Consumer Services (DACS) supports and promotes Florida agriculture, protects the environment, safeguards consumers, and ensures the safety and wholesomeness of food.[1] The Division of Licensing (Division) within DACS administers Florida's concealed weapon licensing program[2] and oversees Florida's private investigative, private security, and recovery services industries.[3] The Division's regulatory oversight of those services includes licensing, enforcing compliance standards, and ensuring public protection from unethical business practices and unlicensed activity.[4]

Private Investigative and Security Services

Currently, the Division offers 22 different types of private investigative, private security, and recovery services licenses and four different types of concealed weapon or firearm licenses. As of December 31, 2021, the Division had issued a total of 169,758 private investigative, private security, and recovery services licenses and 2,459,530 concealed weapon permits, to qualified applicants. The following chart provides a breakdown of the total number of each license type.[5]

License Type	License Title	Total
C	Private Investigators	6,992
CC	Private Investigator Interns	1,333
A	Private Investigative Agencies	2,627
AA	Private Investigative Agency Branch Offices	21
MA	Private Investigative Agency Managers	81
M	Private Investigative/Security Agency Managers	473
D	Security Officers	124,996
B	Security Agencies	1,836
BB	Security Agency Branch Offices	181
MB	Security Managers	1,395
AB	Security Agency/Private Investigative Agency Branch Offices	19
DS	Security Officer Schools	378
DI	Security Officer Instructors	1,705
G	Statewide Firearm Licenses	26,026
K	Firearms Instructors	617
E	Recovery Agents	743
EE	Recovery Agent Interns	282
R	Recovery Agencies	282
RR	Recovery Agency Branch Offices	38
MR	Recovery Agency Managers	1
RS	Recovery Agent Schools	6

[1] Department of Agriculture and Consumer Services, *About*, http://www.freshfromflorida.com/About/ (last visited Mar. 7, 2019).
[2] S. 790.06, F.S.
[3] Ch. 493, F.S.
[4] Office of Program Policy Analysis and Government Accountability, Government Program Summaries, Department of Agriculture and Consumer Services Licensing, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4101 (last visited Jan. 23, 2022).
[5] The Florida Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports*, https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports (last visited Jan. 23, 2022).

RI	Recovery Agent Instructors	9
Subtotal of Private Investigative, Private Security, and Recovery Services Licenses		**169,758**
W	Concealed Weapon or Firearm	2,445,471
WJ	Concealed Weapon or Firearm/Circuit and County Judges	809
WR	Concealed Weapon or Firearm/Retired Law Enforcement and Correctional Officers	13,244
WS	Concealed Weapon or Firearm/Consular Security Official	6
Subtotal of Concealed Weapon Licenses		**2,459,530**
Total Number of Licenses		**2,629,571**

Class "D" Security Officers

Section 493.6101, F.S., defines the following:

- "Security officer" means any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.[6]
- "Security agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing security services, armored car services, or transporting prisoners.

To become an unarmed security officer in Florida, a Class "D" Private Security license is required.[7] "Unarmed" means that no firearm shall be carried while providing security officer services regulated by ch. 493, F.S.[8] In order to carry a firearm in the course of performing such duties, the licensee must also obtain a Class "G" Statewide Firearm license in addition to the Class "D" Private Security license.[9]

To qualify for a Class "D" Private Security license, an applicant must:

- Be at least 18 years old;
- Be one of the following:
  - A United States citizen,
  - A permanent legal resident, or
  - A holder of a work visa from the United States Citizenship and Immigration Service;
- Have no disqualifying criminal history;
- Be of good moral character;
- Have no history of:
  - Mental illness,
  - Alcohol abuse, or
  - Substance abuse;
- Submit an application with certain identifying information;[10] and
- Complete 40 hours of required training and submit proof thereof to DACS.[11]

Currently, the required training must take place in-person at a licensed school or training facility that has a physical location.[12] Many states, including California and Georgia, do not prohibit online training for unarmed security officers.[13]

[6] S. 493.6101(19), F.S.
[7] S. 493.6301(5), F.S. Exceptions to the licensure requirement are listed in s. 493.6102, F.S.
[8] S. 493.6101(9), F.S.
[9] S. 493.6115(2), F.S.
[10] S. 493.6105, F.S. and r. 5N-1.100(6), F.A.C.
[11] S. 493.6303(4)(a), F.S.

According to the National Conference of State Legislatures (NCSL),[14] eleven states do not require a license for unarmed security guards.[15] Of the states that do require a license, 13 do not have any training requirements in order to qualify for a license.[16] Of the states that do require licensure, only nine states explicitly require that training be provided in a classroom setting.[17]

Class "G" Statewide Firearm License

In order to carry a firearm in the course of duty, the licensee must also obtain a Class "G" Statewide Firearm license.[18] Only Class "C" Private Investigator, Class "CC" Private Investigator Intern, Class "D" Security Officer, Class "M" Private Investigative/Security Agency Manager, Class "MA" Private Investigative Agency Manager, or Class "MB" Security Manager licensees are permitted to bear a firearm and any such licensee who bears a firearm must also have a Statewide Firearm license.[19]

An applicant for a Class "G" Statewide Firearm license must satisfy minimum training criteria for firearms established by DACS rule,[20] including, but not limited to, 28 hours of range and classroom training taught and administered by a Class "K" Firearms Instructor licensee; however, no more than 8 hours of such training may consist of range training.[21]

Class "DS" Security Officer Schools and Training Facilities

Schools and training facilities that provide required training services for Class "D" Security Officer license applicants must submit an application for a Class "DS" Security Officer School license with the following information:

- The name and address of the school or training facility,
- The street address of the place where training will be conducted, and
- A copy of the curriculum and final exam to be administered,[22] in accordance with the requirements set forth by DACS.[23]

The general content and number of hours of each subject area to be taught in a school or training facility is established by DACS rule.[24] Firearms instructors may use audio/video material as an instructional aide when teaching the classroom portion of the firearms training course; however, in no case can an instructor rely solely on the use of audio/video material. Firearms instruction must be presented as live, in-person classes where the firearms instructor is present to allow for necessary student teacher interaction when teaching students to use firearms.[25]

Effect of the Bill

Class "G" Statewide Firearm Licenses

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[12] Ss. 493.6303(4)(a) and 493.6304, F.S.; and Department of Agriculture and Consumer Services, *Class "D" Security Officer License Requirements*, https://www.freshfromflorida.com/Business-Services/Private-Security-Licenses/Class-D-Security-Officer-License-Requirements (last visited Jan. 24, 2022).
[13] Cal. Bus. & Prof. § 7583.6 (2017); Ga. Comp. R. & Regs. r. 509-3-.02; and O.C.G.A. § 43-38-7.1(a).
[14] Email from Zach Hermann, MSW, Research Analyst II, Employment, Labor & Retirement Program, National Conference of State Legislatures, NCSL REPLY: classroom vs online education for unarmed security guard licensure, (Mar. 11, 2019).
[15] Colorado, Idaho, Kansas, Kentucky, Massachusetts, Mississippi, Missouri, Nebraska, Rhode Island, South Dakota, and Wyoming.
[16] Indiana, Iowa, Maine, Maryland, Michigan, Montana, Nevada, New Hampshire, Ohio, Pennsylvania, Texas, West Virginia, and Wisconsin.
[17] Alabama, Georgia, Illinois, North Carolina, North Dakota, Oregon, Utah, Vermont, and Virginia.
[18] S. 493.6115(2), F.S.
[19] S. 493.6115(2), F.S.
[20] R. 1.132, F.A.C.
[21] S. 493.6105(5), F.S.
[22] S. 493.6304, F.S.
[23] R. 5N-1.134, F.A.C.
[24] S. 493.6303(4)(a), F.S.
[25] R. 5N-1.132(4)(c), F.A.C.

The bill revises the minimum firearms training criteria for Class “G” Statewide Firearm license applicants to require the 28 hours of range and classroom training be conducted by in-person instruction or online through a secure website of the licensed school or training facility if the applicant's identity, attendance, and successful completion of training are verified. The applicant must report the verification to DACS upon completion of the training.

The bill specifies that no more than 21 hours of such training may be conducted in an online classroom, and no more than eight hours of such training shall consist of range training.

The bill requires DACS to by rule and in accordance with s. 493.6115, F.S., establish the general content, the number of hours of each subject area to be taught, the method of delivery and the security protocols for online training and testing, the reporting requirements for verification of successful completion of training, and any other rules necessary for the regulation of schools or training facilities providing in-person or online training.

Class “DS” Security Officer Schools and Training Facilities

The bill requires an online training course for Class "D" Security Officer license or Class "G" Statewide Firearm license to be attached to and conducted by a licensed school or training facility that maintains a physical location.

The bill requires firearms instructors conducting an online training course to work under a licensed school or training facility or be employed under a business establishment registered, permitted, or licensed by DBPR with an insurance policy in the minimum amount of $1,000,000.

The bill specifies that an applicant may only be logged into the online training course from one device at a time.

The bill requires such online training courses to:

- Include security questions to ensure that the applicant is actively using the computer or mobile device and is following along with the online training;
- Set a minimum amount of time that each applicant must spend on each screen before moving on to the next screen; and
- Include randomized test questions.

The bill requires online training course certificates to be sequentially numbered for tracking purposes.

Class “D” Security Officer Licenses

The bill revises the 40 hour training requirement for applicants for a Class “D” Security Officer license to allow the required training to be conducted in-person or online through a secure website of the licensed school or training facility if the applicant's identity, attendance, and successful completion of training are verified.

The bill requires applicants to report the verification to DACS upon completion of the training.

Such training is valid only if DACS receives verification of the applicant’s identity, attendance, and successful completion. DACS is required to establish by rule, and in accordance with s. 493.6103, F.S., the following:

- General content;
- Number of hours of each subject area;
- Method of delivery;
- Security protocols;
- Reporting requirements for verification of successful completion; and
- Any other rules necessary for the regulation of schools or training facilities providing in-person or online training.

The bill provides that upon completion of such training, the training facility or the instructor must:

- Submit proof of completion of training for each applicant to DACS electronically in a manner prescribed by DACS; and
- Provide a copy of the training results to the applicant who completed the training.

B. SECTION DIRECTORY:

Section 1: Amends s. 493.6105, F.S., relating to initial application for license.

Section 2: Creates s. 493.6132, F.S., relating to online training courses.

Section 3: Amends s. 493.6303, F.S., relating to license requirements.

Section 4: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   There may be a cost to DACS related to implementing the bill. The department has not submitted an agency analysis for the bill. However, in 2019, the department conducted an agency analysis for a similar bill, which determined:

   - Development of administrative rules would be needed to implement an online training regulatory component and estimates one (1) forensic investigator position will be needed to administer the provisions of the bill as currently written given that there are 413 security officer schools licensed as of January 31, 2019, that could opt to offer online coursework.[26]
   - The estimated fiscal impact would be $63,688 in year one and $59,933 annually, thereafter, attributable to the cost of the (1) Investigation Specialist I. These costs would be incurred in the Division of Licensing Trust Fund.[27]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Online training may make the profession more accessible based on increased ease in obtaining the required training. Schools and training facilities may also offer training at a lower cost due to reduced costs from running physical facilities.

D. FISCAL COMMENTS:

None.

[26] Department of Agriculture and Consumer Services, Agency Analysis of 2019 HB 515, p. 1 (Mar. 7, 2019).
[27] *Id.*

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 DACS to develop rules in accordance with ss. 493.6115, and 493.6103, F.S., to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to online training for private security officers; amending ss. 493.6105 and 493.6303, F.S.; providing that certain required training criteria for a Class "D" or Class "G" license may be conducted online; providing requirements for such online training; requiring the Department of Agriculture and Consumer Services to establish certain criteria and rules for the regulation of certain entities that provide online training; providing reporting requirements upon completion of the training; creating s. 493.6132, F.S.; providing requirements for online training courses for a Class "D" or Class "G" license; providing an effective date.

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

Section 1. Subsection (5) of section 493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

(5) In addition to the requirements outlined in subsection (3), an applicant for a Class "G" license must satisfy minimum training criteria for firearms established by rule of the department, which training criteria includes, but is not limited to, 28 hours of range and classroom training conducted by in-

person instruction or online through a secure website of the licensed school or training facility if the applicant's identity, attendance, and successful completion of training are verified. The applicant must report the verification to the department upon completion of the training. Training is to be taught and administered by a Class "K" licensee; however, no more than 21 hours may be conducted in an online classroom, and no more than 8 hours of such training shall consist of range training. The department shall by rule and in accordance with s. 493.6115 establish the general content, the number of hours of each subject area to be taught, the method of delivery and the security protocols for online training and testing, the reporting requirements for verification of successful completion of training, and any other rules necessary for the regulation of schools or training facilities providing in-person or online training. The department may waive the foregoing firearms training requirement if:

(a) The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer pursuant to the requirements of the Criminal Justice Standards and Training Commission or has successfully completed the training required for certification within the last 12 months.

(b) The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has

received law enforcement firearms training administered by a federal law enforcement agency.

(c) The applicant submits a valid firearm certificate among those specified in paragraph (6)(a).

Section 2. Section 493.6132, Florida Statutes, is created to read:

493.6132 Online training courses.—

(1) An online training course for a Class "D" or Class "G" license must be attached to and conducted by a licensed school or training facility that maintains a physical location.

(2) A firearms instructor conducting an online training course must work under a licensed school or training facility or be employed under a business establishment registered, permitted, or licensed by the Department of Business and Professional Regulation with an insurance policy in the minimum amount of $1,000,000.

(3) An applicant may only be logged into the online training course from one device at a time.

(4) The online training course must:

(a) Include security questions to ensure that the applicant is actively using the computer or mobile device and is following along with the online training.

(b) Set a minimum amount of time that each applicant must spend on each screen before moving on to the next screen.

(c) Include randomized test questions.

(5) Online training course certificates must be sequentially numbered for tracking purposes.

Section 3. Paragraph (a) of subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency must comply with the following additional requirements:

(4)(a) An applicant for a Class "D" license must submit proof of successful completion of a minimum of 40 hours of professional training at a school or training facility licensed by the department. The training may be conducted by in-person instruction or online through a secure website of the licensed school or training facility if the applicant's identity, attendance, and successful completion of training are verified. The applicant must report the verification to the department upon completion of the training. The department shall by rule and in accordance with s. 493.6103 establish the general content and number of hours of each subject area to be taught, the method of delivery and the security protocols for online training and testing, the reporting requirements for verification of successful completion of training, and any other rules necessary for the regulation of schools or training facilities providing in-person or online training. Upon completion of such training, the training facility or the

instructor must submit proof of completion of training for each applicant to the department electronically in a manner prescribed by the department. The training facility or the instructor must also provide a copy of the training results to the applicant who completed the training.

Section 4. This act shall take effect July 1, 2022.

REGULATORY REFORM SUBCOMMITTEE

HB 1233 by Rep. Fine
Online Training for Private Security Officers

AMENDMENT SUMMARY
January 27, 2022

Amendment 1 by Rep. Fine (lines 61-66):

- Corrects a reference to the Department of Business and Professional Regulation to instead reference the Department of Agriculture and Consumer Services.

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: Regulatory Reform Subcommittee

Representative Fine offered the following:

Amendment

Remove lines 61-66 and insert:

(2) A firearms instructor conducting an online training course must work under a licensed school or training facility or be employed under a business establishment registered, permitted, or licensed by the Department of Agriculture and Consumer Services with an insurance policy in the minimum amount of $1,000,000.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1451 Malt Beverages
SPONSOR(S): DiCeglie
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Wright	Anstead
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

In Florida, alcoholic beverages are regulated by the Beverage Law, which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.

Exceptions to the three-tier regulatory system permit in-state wineries, breweries, and craft distilleries to be licensed as a vendor and sell directly to consumers under certain circumstances. Examples of exceptions include brewpubs and craft brewers, which may be both a vendor and a manufacturer, subject to certain requirements.

There are no regulations in the Beverage Law which directly address contract and alternating proprietorship brewing, but the federal regulatory agency, the Alcohol and Tobacco Tax and Trade Bureau, allows the practices under certain circumstances.

The bill:

- Provides a definition for "barrel," which means 31 gallons, and conforms related provisions in the Beverage Law.
- Allows brewpubs to sell their product for consumption on any licensed premises owned by the vendor, instead of being limited to the brewpub licensed premises or contiguous licensed premises.
- Converts the beverage measurement used to calculate excise taxes to 0.375 cents per ounce, from 6 cents per pint or fraction thereof. The measurement is equal, except that the current provision requires the tax on each fraction of a pint, which requires rounding up to a pint for excise tax payment purposes.
- Removes the requirement that alcohol manufacturers must file with the division a surety bond covering the amount of their estimated excise tax payment.
- Provides that only registrants for a brand or label sold to a distributor, not those kept in-house, must pay an annual registration fee of $30.
- Reduces the annual state license tax that each craft brewer engaged in the business of brewing less than 5,000 barrels of malt beverages pays to $500 for each plant or branch, like a similarly situated brewpub.
- Provides guidelines for contract brewing and alternating proprietorship brewing.

The bill will have an indeterminate, negative fiscal impact on state government, and no impact on local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Beverage Law

In Florida, alcoholic beverages are regulated by the Beverage Law,[1] which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a "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. A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.

Generally, Florida has adopted the three-tier system. Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.[4] Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.[5] Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.[6]

Tied House Evil Prohibitions

Certain relationships and interactions of manufacturers and distributors with vendors are regulated by the Beverage Law in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans or property, or rebates.[7] Exceptions to the three-tier regulatory system permit in-state wineries,[8] breweries,[9] and craft distilleries to be licensed as a vendor and sell directly to consumers under certain circumstances.[10]

Brewpub Exception

An exception where an entity may obtain both a license as a manufacturer of malt beverages and a vendor's license for the sale of alcoholic beverages is often referred to as the Brewpub Exception. This exception was added to permit a vendor to be licensed as a manufacturer of malt beverages at a single location, with the following requirements:[11]

- The brewpub may not brew more than 10,000 kegs ("keg" means 15.5 gallons) of malt beverages on the premises per year;
- Malt beverages "so brewed" must be sold to consumers for consumption on the vendor's licensed premises or on contiguous licensed premises owned[12] by the vendor;
- Wine or liquor may be sold for on-premises consumption as authorized by its vendor's license;
- The brewpub must keep records and pay excise taxes for the malt beverages it sells or gives to consumers.

[1] S. 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] S. 561.14(3), F.S. However, *see* the exceptions provided in ss. 561.221 and 565.03, F.S.
[5] S. 561.22, F.S.
[6] Ss. 563.022(14) and 561.14(1), F.S.
[7] S. 561.42, 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] S. 561.221(3), F.S.
[12] "Owned" is undefined.

Craft Breweries Exception
The division is authorized to issue a vendor's license to a manufacturer of malt beverages for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery (craft brewery), which may be divided by no more than one public street or highway.[13]

A craft brewery with multiple manufacturing licenses may transfer malt beverages that it produces between its breweries.[14] Such transfers are limited to an amount equal to 100 percent of the yearly production of the receiving brewery.

All malt beverages and other alcoholic beverages that are not manufactured by the craft brewery must be obtained through a distributor, an importer, sales agent, or broker.

The division may not issue more than eight vendor's licenses to a manufacturer of malt beverages.[15]

Excise Tax Reporting and Payment
Manufacturers, distributors, and vendors of malt beverages containing 0.5 percent or more of alcohol by volume are required to report and pay an excise tax on malt beverages.[16] Manufacturers and distributors are required to compute and submit the applicable excise taxes on alcoholic beverages with the required report[17] to the division, on or before the 10th of each month, for all beverages sold during the previous calendar month.[18]

The payable excise tax is:[19]
- 48 cents per gallon on all such beverages in bulk or in kegs or barrels; and
- 6 cents on each pint **or fraction thereof** in the container when such beverages are sold in containers of less than 1 gallon.

Surety Bonds
Each manufacturer and distributor must file a surety bond with the division as surety for the payment of all taxes. The sum of the surety bond is based on the size of the manufacturer, the type of alcohol distributed, and the discretion of the division. The maximum bond amount is $25,000, and the minimum bond amount is $1,000.[20]

Brand and Label Registration Fee
No manufacturer, brewer, bottler, distributor, or importer of malt beverages may sell or offer for sale in Florida, or move or cause to be moved within or into Florida, any malt beverages, without:[21]
- qualifying to do business in the state and registering its name and the brands or labels under which the malt beverages are to be sold or moved; and
- furnishing any samples and information as to content, quality, and formula of such malt beverages as the division may require.

Each registrant must pay an annual registration fee of $30 for a brand or label.[22]

Plant and Branch License Tax
Each manufacturer engaged in the business of brewing only malt beverages must pay an annual state license tax of $3,000 for each plant or branch it operates. However, each manufacturer engaged in the business of brewing less than 10,000 kegs of malt beverages annually for consumption on the

[13] S. 561.221(2), F.S.
[14] S. 563.022(14)(d), F.S.
[15] S. 561.221(2)(e), F.S.
[16] S. 563.05, F.S.
[17] S. 561.55, F.S.,
[18] S. 561.50, F.S.
[19] S. 563.05, F.S.
[20] S. 561.37, F.S.
[21] S. 563.045(1), F.S.
[22] S. 563.045(2), F.S.

premises pursuant to the brewpub exception pays a smaller annual state license tax of $500 for each plant or branch.[23]

Contract and Alternating Proprietorship Brewing

There are no regulations in the Beverage Law which directly address contract and alternating proprietorship brewing, but the federal regulatory agency, the Alcohol and Tobacco Tax and Trade Bureau (TTB), allows the practices under certain circumstances.

Generally, alternating proprietorship brewing occurs when the proprietor of an existing brewery, the "host brewery," agrees to rent space and equipment to a "guest brewer." These arrangements generally allow existing breweries to use excess capacity and give new entrants to the beer business an opportunity to begin on a small scale, without investing in premises and equipment.[24]

Generally, contract brewing occurs when someone pays a brewing company, the "contract brewer," to brew the beer per a certain beer recipe. The TTB considers this arrangement to be an ordinary commercial business relationship.[25]

Effect of the Bill

The bill defines **"barrel,"** which means 31 gallons. The bill conforms the manufacturing limit in the brewpub exception to the new definition, to 5,000 barrels, from 10,000 kegs.

The bill allows **brewpubs** to sell their product for consumption on any licensed premises owned by the vendor, instead of being limited to the brewpub licensed premises or contiguous licensed premises. Ownership is not defined.

The bill converts the beverage measurement used to calculate **excise taxes** to 0.375 cents per ounce, from 6 cents per pint or fraction thereof. The measurement is equal, and will end the practice of rounding up where there is a fraction of a pint.

The bill removes the requirement that alcohol manufacturers must file a **surety bond** with the division. Distributors will still need to file a surety bond with the division.

The bill provides that only **registrants for a brand or label sold to a distributor,** not those kept in-house, must pay an annual registration fee of $30. The bill also specifies that no other annual registration fee for a brand or label is authorized under the provision.

The bill changes the calculation used to determine the annual state license tax that each craft brewer engaged in the business of brewing must pay from less than 10,000 kegs, to less than 5,000 barrels of malt beverages, which allows such brewers to pay a **smaller annual state license tax** of $500 for each plant or branch, like a brewpub.

The bill provides guidelines for contract and alternating proprietorship brewing. The definitions for that section are:

- **"Alternating proprietorship brewing"** means an agreement between a guest brewer and host brewer wherein the guest brewer manufactures malt beverages on the host brewer's licensed premises.
- **"Contract brewer"** means a licensed manufacturer of malt beverages who brews malt beverages on its licensed premises for a contracting brewer.
- **"Contract brewing"** means an agreement wherein a contracting brewer pays a contract brewer to produce malt beverages.

[23] S. 563.02(2), F.S.
[24] U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, *Brewery Alternating Proprietorships*, https://www.ttb.gov/beer/brewery-alternating-proprietorships (last visited Jan. 24, 2022).
[25] Gina McCreadie, *Contract Brewing v. Alternating Brewery Proprietorship: Which One is Right for You?*, New York State Brewer's Association (Oct. 21, 2015), https://newyorkcraftbeer.com/2015/10/contract-brewing-vs-alternating-brewery-proprietorship-which-one-is-right-for-you/ (last visited Jan. 24, 2022).

- **"Contracting brewer"** means a licensed manufacturer of malt beverages who contracts for the services of a contract brewer.
- **"Guest brewer"** means a licensed manufacturer of malt beverages who brews malt beverages at a host brewer's licensed premises.
- **"Host brewer"** means a licensed manufacturer of malt beverages who allows a guest brewer to brew malt beverages on the manufacturer's licensed premises.

The bill provides that the contract brewer:

- May enter into multiple contract brewing agreements for the purpose of manufacturing malt beverages.
- Must comply with all applicable federal and state laws, including labeling laws.
- Must pay all federal and state taxes on malt beverages upon removal of the malt beverages from its licensed premises.
- Retains title to malt beverages produced under a contract brewing agreement until such beverages are removed from its licensed premises.
- Must ensure that the contracting brewer's malt beverages remain separate and identifiable from all other malt beverages at all times.
- May transfer malt beverages to the contracting brewer in an amount up to the yearly production amount of the contracting brewer's facility.
- Must report to the division by the 10th day of each month the volume of each label of malt beverages manufactured on its licensed premises under the contract brewing agreement.

The bill provides that the contracting brewer:

- May only engage in the manufacture of malt beverages on its duly licensed premises and on the licensed premises of a contract brewer as disclosed to the division.
- Must report to the division by the 10th day of each month the volume of each label of malt beverages manufactured on the licensed premises of the contract brewer under the contract brewing agreement.

The bill provides that the contract brewer and contracting brewer:

- Must, before engaging in contract brewing, notify the division, on forms provided by the division, of their intent to operate as a contract brewer or contracting brewer and disclose the location of the licensed premises where brewing will occur.
- Must maintain all records required to be kept by manufacturers of malt beverages under the Beverage Law.
- Notwithstanding any other provision of the Beverage Law, must comply with applicable requirements for holders of multiple manufacturing licenses and alcoholic beverages manufactured by another manufacturer.

The bill requires the host brewer to report to the division by the 10th day of each month the volume of each label of malt beverages manufactured on its licensed premises under the alternating proprietorship brewing agreement.

The bill requires the guest brewer to:

- Comply with all applicable federal and state laws, including labeling laws.
- Pay all federal and state taxes on malt beverages manufactured pursuant to this section upon removal of the malt beverages from the host brewer's licensed premises.
- Retain title to malt beverages manufactured under an alternating proprietorship brewing agreement.
- Report to the division by the 10th day of each month the volume of each label of malt beverages manufactured at each licensed premises under each alternating proprietorship brewing agreement.

The bill requires that, before engaging in alternating proprietorship brewing, the host brewer and guest brewer:

- Must each qualify as a brewer with the TTB.

- Must submit to the division, on forms provided by the division, information identifying:
  - The host brewer.
  - The guest brewer.
  - The location where the alternating proprietorship brewing will take place.
  - The location where any product brewed pursuant to the alternating proprietorship brewing agreement will be stored.
  - The amount of malt beverages to be produced under the alternating proprietorship brewing agreement.
  - The timeframe in which the guest brewer will be manufacturing malt beverages on the host brewer's licensed premises.
  - Proof of occupancy rights to the host brewer's licensed premises for the duration of the alternating proprietorship brewing agreement.
  - Any other information reasonably deemed necessary by the division to ensure the health, safety, and welfare of the public or to ensure that all applicable taxes on the malt beverages produced pursuant to an alternating proprietorship brewing agreement are remitted to the state.

The bill requires each entity engaged in contract brewing or alternating proprietorship brewing to maintain records, including:

- Any agreement authorizing the manufacturing and transfer of malt beverages.
- Records of the total volume, in gallons, manufactured as part of the agreement.
- Any other records required by the division to ensure compliance with the provisions of the Beverage Law.

The bill prohibits vendors licensed as a manufacturer pursuant to the brewpub exception from engaging in contract brewing or alternating proprietorship brewing.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1 Amends s. 561.01, F.S., adding a definition.
Section 2 Amends s. 561.221, F.S., conforming measurements and revising requirements for licensed premises.
Section 3 Amends s. 561.37, F.S., revising surety bond requirements.
Section 4 Amends s. 563.042, F.S., authorizing contract and alternating proprietorship brewing.
Section 5 Amends s. 563.045, F.S., revising requirements for brand and label fees.
Section 6 Amends s. 563.05, F.S, revising excise taxes for malt beverages.
Section 7 Amends s. 563.02, F.S., revising fees for malt beverage licenses.
Section 8 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate at this time. DBPR and the Ways and Means Committee are evaluating the fiscal impact of the bill. The change related to the excise tax will likely result in loss to the state. In addition, the lowering of the license tax will also result in a loss.

2. Expenditures:

   Indeterminate at this time. DBPR and Ways and Means Committee are evaluating the fiscal impact of the bill.

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 impact on craft brewers and brewpubs, who may pay less in fees and taxes to the division.

The bill will allow alternating proprietorship brewing and contract brewing, which may allow smaller brewers to expand their businesses without a manufacturing facility of their own.

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 provides the division with rulemaking authority to adopt rules related to excise taxes on malt beverages.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to malt beverages; amending s. 561.01, F.S.; defining the term "barrel"; amending s. 561.221, F.S.; revising the unit of measurement used for certain licensing purposes; authorizing certain vendors to sell specified malt beverages on any licensed premises; amending s. 561.37, F.S.; removing the requirement that certain manufacturers pay a surety bond for taxes; creating s. 563.042, F.S.; providing definitions; authorizing certain manufacturers to enter into contract brewing and alternating proprietorship brewing agreements; providing responsibilities and requirements of parties under such agreements; prohibiting specified parties from participating in such agreements; authorizing the Division of Alcoholic Beverages and Tobacco to adopt rules; amending s. 563.045, F.S.; providing that the annual registration fee is required only if labels or brands are sold to a distributor; specifying that no other registration fee is authorized; amending s. 563.05, F.S.; revising the unit of measurement used for calculating excise taxes; amending s. 563.02, F.S.; revising the unit of measurement used for certain fee purposes; expanding the types of manufacturers that qualify to pay a lower license tax;

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

providing an effective date.

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

Section 1. Subsection (22) is added to section 561.01, Florida Statutes, to read:

561.01 Definitions.—As used in the Beverage Law:

(22) "Barrel" means a quantity of 31 gallons.

Section 2. Paragraph (a) of subsection (3) of section 561.221, Florida Statutes, is amended to read:

561.221 Licensing of manufacturers and distributors as vendors and of vendors as manufacturers; conditions and limitations.—

(3)(a) Notwithstanding other provisions of the Beverage Law, any vendor licensed in this state may be licensed as a manufacturer of malt beverages upon a finding by the division that:

1. The vendor will be engaged in brewing malt beverages at a single location and in an amount which will not exceed 5,000 barrels of beer ~~10,000 kegs~~ per year. ~~For purposes of this subsection, the term "keg" means 15.5 gallons.~~

2. The malt beverages so brewed will be sold to consumers for consumption on ~~the~~ any ~~vendor's~~ licensed premises ~~or on contiguous licensed premises~~ owned by the vendor.

Section 3. Section 561.37, Florida Statutes, is amended to

read:

561.37 Bond for payment of taxes.—Each ~~manufacturer and each~~ distributor shall file with the division a surety bond acceptable to the division in the sum of $25,000 as surety for the payment of all taxes, provided, however, that when in the discretion of the division the amount of business done by the ~~manufacturer or~~ distributor is of such volume that a bond of less than $25,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in a lesser sum than $25,000, but in no event shall it accept a bond of less than $10,000, and it may at any time in its discretion require any bond in an amount less than $25,000 to be increased so as not to exceed $25,000; ~~provided, however, that the amount of bond required for a brewer shall be $20,000, except that where, in the discretion of the division, the amount of business done by the brewer is of such volume that a bond of less than $20,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in a lesser sum than $20,000, but in no event shall it accept a bond of less than $10,000, and it may at any time in its discretion require any bond in an amount less than $20,000 to be increased so as not to exceed $20,000; provided further that the amount of the bond required for a wine or wine and cordial manufacturer shall be $5,000, except that, in the case of a manufacturer engaged solely in the experimental~~

~~manufacture of wines and cordials from Florida products, where in the discretion of the division the amount of business done by such manufacturer is of such volume that a bond of less than $5,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in a lesser sum than $5,000, but in no event shall it accept a bond of less than $1,000 and it may at any time in its discretion require a bond in an amount less than $5,000 to be increased so as not to exceed $5,000;~~ provided~~, further,~~ that the amount of bond required for a distributor who sells only beverages containing not more than 4.007 percent of alcohol by volume, in counties where the sale of intoxicating liquors, wines, and beers is prohibited, and to distributors who sell only beverages containing not more than 17.259 percent of alcohol by volume and wines regardless of alcoholic content, in counties where the sale of intoxicating liquors, wines, and beers is permitted, shall file with the division a surety bond acceptable to the division in the sum of $25,000, as surety for the payment of all taxes; provided, however, that where in the discretion of the division the amount of business done by such distributor is of such volume that a bond of less than $25,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law the division may accept a bond in a less sum than $25,000 but in no event shall it accept a bond less than $1,000 and it may at any time in its discretion

require any bond in an amount less than $25,000 to be increased so as not to exceed $25,000; provided, further, that the amount of bond required for a distributor in a county having a population of 15,000 or less who procures a license by which his or her sales are restricted to distributors and vendors who have obtained licenses in the same county, shall be $5,000.

Section 4. Section 563.042, Florida Statutes, is created to read:

563.042 Contract and Alternating Proprietorship Brewing.—

(1) As used in this section the term:

(a) "Alternating proprietorship brewing" means an agreement between a guest brewer and host brewer wherein the guest brewer manufactures malt beverages on the host brewer's licensed premises.

(b) "Contract brewer" means a licensed manufacturer of malt beverages who brews malt beverages on its licensed premises for a contracting brewer.

(c) "Contract brewing" means an agreement wherein a contracting brewer pays a contract brewer to produce malt beverages.

(d) "Contracting brewer" means a licensed manufacturer of malt beverages who contracts for the services of a contract brewer.

(e) "Guest brewer" means a licensed manufacturer of malt beverages who brews malt beverages at a host brewer's licensed

premises.

(f) "Host brewer" means a licensed manufacturer of malt beverages who allows a guest brewer to brew malt beverages on the manufacturer's licensed premises.

(2) The contract brewer:

(a) May enter into multiple contract brewing agreements for the purpose of manufacturing malt beverages.

(b) Shall comply with all applicable federal and state laws, including labeling laws.

(c) Shall pay all federal and state taxes on malt beverages manufactured pursuant to this section upon removal of the malt beverages from its licensed premises.

(d) Retains title to malt beverages produced under a contract brewing agreement until such beverages are removed from its licensed premises.

(e) Shall ensure that the contracting brewer's malt beverages remain separate and identifiable from all other malt beverages at all times.

(f) Notwithstanding any other provision of the Beverage Law, may transfer malt beverages to the contracting brewer in an amount up to the yearly production amount of the contracting brewer's facility.

(g) Shall report to the division by the 10th day of each month the volume of each label of malt beverages manufactured on its licensed premises under the contract brewing agreement.

(3) The contracting brewer:

(a) May only engage in the manufacture of malt beverages on its duly licensed premises and on the licensed premises of a contract brewer disclosed under paragraph (4)(a).

(b) Shall report to the division by the 10th day of each month the volume of each label of malt beverages manufactured on the licensed premises of the contract brewer under the contract brewing agreement.

(4) The contract brewer and contracting brewer:

(a) Must, before engaging in contract brewing, notify the division, on forms provided by the division, of their intent to operate as a contract brewer or contracting brewer and disclose the location of the licensed premises where brewing will occur.

(b) Shall maintain all records required to be kept by manufacturers of malt beverages under the Beverage Law.

(c) Notwithstanding any other provision of the Beverage Law, shall comply with s. 561.221(2)(c).

(5) The host brewer shall report to the division by the 10th day of each month the volume of each label of malt beverages manufactured on its licensed premises under the alternating proprietorship brewing agreement.

(6) The guest brewer:

(a) Shall comply with all applicable federal and state laws, including labeling laws.

(b) Shall pay all federal and state taxes on malt

beverages manufactured pursuant to this section upon removal of the malt beverages from the host brewer's licensed premises.

(c) Retains title to malt beverages manufactured under an alternating proprietorship brewing agreement.

(d) Shall report to the division by the 10th day of each month the volume of each label of malt beverages manufactured at each licensed premises under each alternating proprietorship brewing agreement.

(7) Before engaging in alternating proprietorship brewing, the host brewer and guest brewer:

(a) Must each qualify as a brewer with the Alcohol and Tobacco Tax and Trade Bureau under the U.S. Department of the Treasury.

(b) Shall submit to the division, on forms provided by the division, information identifying:

1. The host brewer.

2. The guest brewer.

3. The location where the alternating proprietorship brewing will take place.

4. The location where any product brewed pursuant to the alternating proprietorship brewing agreement will be stored.

5. The amount of malt beverages to be produced under the alternating proprietorship brewing agreement.

6. The timeframe in which the guest brewer will be manufacturing malt beverages on the host brewer's licensed

premises.

7. Proof of occupancy rights to the host brewer's licensed premises for the duration of the alternating proprietorship brewing agreement.

8. Any other information reasonably deemed necessary by the division to ensure the health, safety, and welfare of the public or to ensure that all applicable taxes on the malt beverages produced pursuant to an alternating proprietorship brewing agreement are remitted to the state.

(8) Each entity engaged in the activities described in this section shall maintain records including:

(a) Any agreement authorizing the manufacturing and transfer of malt beverages.

(b) Records of the total volume, in gallons, manufactured as part of the agreement.

(c) Any other records required by the Division to ensure compliance with the provisions of the Beverage Law.

(9) Manufacturers or vendors licensed pursuant to the s. 561.221(3)(a) may not engage in contract brewing or alternating proprietorship brewing.

Section 5. Subsection (2) of section 563.045, Florida Statutes, is amended to read:

563.045 Brands or labels to be registered; qualification to do business; fee; revocation.—

(2) The ~~each registrant shall pay an~~ annual registration

fee for a brand or label sold to a distributor is ~~of~~ $30 ~~for a brand or label~~. No other annual registration fee for a brand or label is authorized under this section. Any registration may be suspended or revoked in the same manner as a beverage license for any violation of the Beverage Law.

Section 6. Section 563.05, Florida Statutes, is amended to read:

563.05 Excise taxes on malt beverages.—As to malt beverages containing 0.5 percent or more of alcohol by volume, there shall be paid by all manufacturers, distributors, and vendors, as herein defined, a tax of 48 cents per gallon upon all such beverages in bulk or in kegs or barrels; and, when such beverages are sold in containers of less than 1 gallon, the tax will be 0.375 cents per ounce ~~6 cents on each pint or fraction thereof~~ in the container. However, the excise taxes required to be paid by this section upon malt beverages are not required to be paid upon such beverages when they are sold to post exchanges, ship service stores, and base exchanges located in military, naval, or air force reservations within this state.

(10) The division may adopt rules to implement this section.

Section 7. Subsection (2) of section 563.02, Florida Statutes, is amended to read:

563.02 License fees; vendors; manufacturers and distributors.—

(2) Each manufacturer engaged in the business of brewing only malt beverages shall pay an annual state license tax of $3,000 for each plant or branch he or she may operate. However, each manufacturer engaged in the business of brewing less than 5,000 barrels ~~10,000 kegs~~ of malt beverages annually for sale pursuant to s. 561.221(2) or consumption on the premises pursuant to s. 561.221(3) shall pay an annual state license tax of $500 for each plant or branch.

Section 8. This act shall take effect July 1, 2022.

HB 1509

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1509 Private Investigative and Security Services
SPONSOR(S): Byrd
TIED BILLS: **IDEN./SIM. BILLS:** SB 1018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Thompson	Anstead
2) Criminal Justice & Public Safety Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS), Division of Licensing, is responsible for the licensure and regulation of private investigation, security and recovery services, including Class "C" Private Investigator, Class "CC" Private Investigator Intern, Class "D" Security Officer, Class "M" Private Investigative/Security Agency Manager, Class "MA" Private Investigative Agency Manager, and Class "MB" Security Manager licensees. In order to carry a firearm in the course of performing their duties, the licensee must also obtain a Class "G" Statewide Firearm license.

The bill allows Class "C" Private Investigator licensees who do not have a statewide firearm license to bear a firearm if the licensee has a license to carry concealed firearms in the state.

The bill authorizes Class "C" Private Investigator, Class "CC" Private Investigator Intern, Class "D" Security Officer, Class "M" Private Investigative/Security Agency Manager, Class "MA" Private Investigative Agency Manager, and Class "MB" Security Manager licensees, who do not have a Class "G" Statewide Firearm license, to bear a firearm in the performance of their duties if they are:

- A retired law enforcement officer who served at least 10 years, separated from service in good standing, and maintains the annual firearms proficiency qualification; or
- An active law enforcement officer who maintains the annual firearms proficiency qualification required by her or his agency.

The bill authorizes Class "C" Private Investigator, Class "CC" Private Investigator Intern, Class "D" Security Officer licensees who are 21 years of age or older to carry a concealed firearm in the performance of their duties if they have been issued a Class "G" Statewide Firearm license, have a license to carry a concealed firearm, **or** have not been issued a Class "G" Statewide Firearm license but are a retired law enforcement officer who served at least 10 years, separated from service in good standing, and maintains the annual firearms proficiency qualification.

The bill does not appear to have a significant fiscal impact on state or local government.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Department of Agriculture and Consumer Services (DACS) supports and promotes Florida agriculture, protects the environment, safeguards consumers, and ensures the safety and wholesomeness of food.[1] The Division of Licensing (Division) within DACS administers Florida's concealed weapon licensing program[2] and oversees Florida's private investigative, private security, and recovery services industries.[3] The Division's regulatory oversight of those services includes licensing, enforcing compliance standards, and ensuring public protection from unethical business practices and unlicensed activity.[4]

Private Investigative and Security Services

Currently, the Division offers 22 different types of private investigative, private security, and recovery services licenses and four different types of concealed weapon or firearm licenses. As of December 31, 2021, the Division had issued a total of 169,758 private investigative, private security, and recovery services licenses and 2,459,530 concealed weapon permits, to qualified applicants. The following chart provides a breakdown of the total number of each license type.[5]

License Type	License Title	Total
C	Private Investigators	6,992
CC	Private Investigator Interns	1,333
A	Private Investigative Agencies	2,627
AA	Private Investigative Agency Branch Offices	21
MA	Private Investigative Agency Managers	81
M	Private Investigative/Security Agency Managers	473
D	Security Officers	124,996
B	Security Agencies	1,836
BB	Security Agency Branch Offices	181
MB	Security Managers	1,395
AB	Security Agency/Private Investigative Agency Branch Offices	19
DS	Security Officer Schools	378
DI	Security Officer Instructors	1,705
G	Statewide Firearm Licenses	26,026
K	Firearms Instructors	617

[1] Department of Agriculture and Consumer Services, *About*, http://www.freshfromflorida.com/About/ (last visited Jan. 24, 2022).
[2] S. 790.06, F.S.
[3] Ch. 493, F.S.
[4] Office of Program Policy Analysis and Government Accountability, Government Program Summaries, Department of Agriculture and Consumer Services Licensing, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4101 (last visited Jan. 23, 2022).
[5] The Florida Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports*, https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports (last visited Jan. 23, 2022).

E	Recovery Agents	743
EE	Recovery Agent Interns	282
R	Recovery Agencies	282
RR	Recovery Agency Branch Offices	38
MR	Recovery Agency Managers	1
RS	Recovery Agent Schools	6
RI	Recovery Agent Instructors	9
Subtotal Number of Private Investigative, Private Security, and Recovery Services Licenses		**169,758**
W	Concealed Weapon or Firearm	2,445,471
WJ	Concealed Weapon or Firearm/Circuit and County Judges	809
WR	Concealed Weapon or Firearm/Retired Law Enforcement and Correctional Officers	13,244
WS	Concealed Weapon or Firearm/Consular Security Official	6
Subtotal Number of Concealed Weapon Licenses		**2,459,530**
Total Number of Licenses		**2,629,571**

Licensure

To obtain any of the 22 license types under ch. 493, F.S., an applicant must complete and submit an application and meet certain requirements. Each individual, partner, or principal officer in a corporation is required to file with DACS a complete application signed and verified by the individual "under oath" as provided in s. 92.525, F.S.[6]

An applicant must:

- Be at least 18 years old;
- Be one of the following:
  - A United States citizen,
  - A permanent legal resident, or
  - A holder of a work visa from the United States Citizenship and Immigration Service;
- Have no disqualifying criminal history;
- Be of good moral character;
- Have no history of:
  - Mental illness,
  - Alcohol abuse, or
  - Substance abuse; and
- Submit an application with certain identifying information;[7] and
- Complete 40 hours of required training and submit proof thereof to DACS.[8]

Class "C" Private Investigators

Section 493.6101, F.S., defines the following:

[6] S. 493.6105(2), F.S.
[7] S. 493.6105, F.S.
[8] S. 493.6303(4)(a), F.S.

- "Private investigator" means any individual who, for consideration, advertises as providing or performs private investigation. This does not include an informant who, on a one-time or limited basis, as a result of a unique expertise, ability, vocation, or special access and who, under the direction and control of a Class "C" licensee or a Class "MA" licensee, provides information or services that would otherwise be included in the definition of private investigation.
- Private investigative agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations.

To become a private investigator in Florida, a Class "C" Private Investigator license is required.[9] An applicant for the Class "C" Private Investigator license must have two years of lawfully gained, verifiable, full-time experience to qualify for the license.[10] In order to carry a firearm in the course of performing such duties, the licensee must also obtain a Class "G" Statewide Firearm license in addition to the Class "C" Private Investigator license.[11]

Class "D" Security Officers

Section 493.6101, F.S., defines the following:

- "Security officer" means any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.[12]
- "Security agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing security services, armored car services, or transporting prisoners.

To become an unarmed security officer in Florida, a Class "D" Private Security license is required.[13] "Unarmed" means that no firearm shall be carried while providing security officer services regulated by ch. 493, F.S.[14] An applicant for the Class 'D" Private Security license must submit proof of successful completion of a minimum of 40 hours of professional training provided by a security officer school or training facility licensed by DACS.[15] In order to carry a firearm in the course of performing such duties, the licensee must also obtain a Class "G" Statewide Firearm license in addition to the Class "D" Private Security license.[16]

Class "G" Statewide Firearm License

In order to carry a firearm in the course of performing duty, the licensee must also obtain a Class "G" Statewide Firearm license.[17] Specifically, only Class "C" Private Investigator, Class "CC" Private Investigator Intern, Class "D" Security Officer, Class "M" Private Investigative/Security Agency Manager, Class "MA" Private Investigative Agency Manager, or Class "MB" Security Manager licensees are permitted to bear a firearm and any such licensee who bears a firearm must also have a Class "G" Statewide Firearm license.[18]

[9] S. 493.6201(5), F.S.
[10] S. 493.6203, F.S.
[11] S. 493.6115(2), F.S.
[12] S. 493.6101(19), F.S.
[13] S. 493.6301(5), F.S. Exceptions to the licensure requirement are listed in s. 493.6102, F.S.
[14] S. 493.6101(9), F.S.
[15] S. 493.6303(4)(a), F.S.
[16] S. 493.6115(2), F.S.
[17] S. 493.6115(2), F.S.
[18] S. 493.6115(2), F.S.

An applicant for a Class "G" Statewide Firearm license must satisfy minimum training criteria for firearms established by DACS rule,[19] which training criteria includes, but is not limited to, 28 hours of range and classroom training taught and administered by a Class "K" Firearms Instructor licensee; however, no more than 8 hours of such training may consist of range training.[20]

DACS is authorized to waive the firearms training requirement if:

- The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer pursuant to the requirements of the Criminal Justice Standards and Training Commission or has successfully completed the training required for certification within the last 12 months.
- The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency.
- The applicant submits a valid firearm certificate among those specified in paragraph (6)(a).[21]

Duties and Conditions

All licensed employees are prohibited from carrying or being furnished a weapon or firearm unless required in connection with their duties. In such instances, the weapon or firearm is required to be encased in view at all times, except for private investigators, private investigator interns, and security officers who are 21 years of age or older and have been issued a statewide firearm license.[22]

These individuals are authorized to carry a concealed firearm in any location throughout the state while performing the following services within the scope of the license:[23]

- Class "D" Security Officer licensees who are also Class "G" Statewide Firearm licensees and who are performing:
    - Limited, special assignment duties are authorized to carry their authorized firearm concealed in the conduct of such duties.
    - Bodyguard or executive protection services are authorized to carry their authorized firearm concealed **while in nonuniform**[24] as needed in the conduct of such services.[25]

Concealed Carry

Unless exempted, a person may not carry a concealed firearm or weapon in public without a license issued by DACS.[26] The licensing scheme requires DACS to issue a license to any applicant that meets statutory criteria,[27] which includes that the person:

- Is a resident and a citizen of the United States or a permanent resident alien of the United States, or is an eligible consular security official;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm because of a felony conviction;
- Has not been committed for abusing a controlled substance;
- Has not been found guilty of a crime relating to a controlled substance within a three-year waiting period immediately preceding the application date;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;

[19] R. 1.132, F.A.C.
[20] S. 493.6105(5), F.S.
[21] *Id*.
[22] S. 493.6115(3), F.S.
[23] S. 493.6115(4), F.S.
[24] S. 493.6305, F.S., relating to uniforms, required wear, and exceptions allows Class "D" licensees to perform duties regulated under this chapter in nonuniform status on a limited special assignment basis, and only when duty circumstances or special requirements of the client necessitate such dress.
[25] S. 493.6305(3) and (4), F.S.
[26] S. 790.01, F.S.
[27] S. 790.06(2), F.S.

- Desires the legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency in the use of a firearm;
- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless three years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect restraining the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of law.
    - For example, federal law prohibits a person convicted of misdemeanor domestic violence from purchasing a firearm,[28] so a person convicted of misdemeanor domestic violence is ineligible for a license to carry a concealed firearm or weapon in Florida.

Effect of the Bill

The bill allows private investigator licensees who do not have a statewide firearm license to bear a firearm if the licensee has a license to carry concealed firearms issued pursuant to s. 790.06, F.S.

The bill authorizes Class "C" Private Investigator, Class "CC" Private Investigator Intern, Class "D" Security Officer, Class "M" Private Investigative/Security Agency Manager, Class "MA" Private Investigative Agency Manager, or Class "MB" Security Manager licensees who do not have a statewide firearm license to bear a firearm in the performance of her or his duties if they are:

- A retired law enforcement officer who:
    - Separated from service in good standing;
    - Before such separation, served as a law enforcement officer for at least 10 years; and
    - Maintains her or his annual firearms proficiency qualification pursuant to the federal Law Enforcement Officers Safety Act, may bear a firearm in the performance of her or his duties; or
- An active law enforcement officer who maintains the annual firearms proficiency qualification required by her or his agency.

The bill authorizes Class "C" Private Investigator, Class "CC" Private Investigator Intern, Class "D" Security Officer licensees who are 21 years of age or older to carry a concealed firearm in the performance of their duties, if they:

- Have been issued a Class "G" Statewide Firearm license;
- Have a license to carry a concealed firearm; or
- Have not been issued a Class "G" Statewide Firearm license but are a retired law enforcement officer who:
    - Separated from service in good standing;
    - Before such separation, served as a law enforcement officer for at least 10 years; and
    - Maintains her or his annual firearms proficiency qualification pursuant to the federal Law Enforcement Officers Safety Act, may bear a firearm in the performance of her or his duties.

The bill revises the provision that allows Class "D" Security Officer licensees who have a Class "G" Statewide Firearm license and who are performing limited, special assignment duties, or performing bodyguard or executive protection services, to carry their authorized firearm concealed in the conduct of such duties. The bill replaces the criteria that they have a Class "G" Statewide Firearm license to instead allow them to be a retired law enforcement officer who:

- Separated from service in good standing;
- Before such separation, served as a law enforcement officer for at least 10 years; and

[28] 18 U.S.C. § 922(g)(9).

- Maintains her or his annual firearms proficiency qualification pursuant to the federal Law Enforcement Officers Safety Act, may bear a firearm in the performance of her or his duties.

B. SECTION DIRECTORY:

Section 1: Amends s. 493.6115, F.S., relating to weapons and firearms.

Section 2: Amends s. 493.6305, F.S., relating to uniforms, required wear; exceptions.

Section 3: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. There may be a positive fiscal impact to DACS by creating an exception to the eligibility requirements for certain licensees to carry firearms. This may increase the application rate and related license fees received by DACS, but it is unknown how many applicants will qualify.

   According to DACS, the projected annual revenue reductions of Class "G" Statewide Firearm licensees allowing their license to lapse equaling $115K would be more than offset by almost $162K of additional estimated revenue collected in the first year of enactment, from these same Class "C/CC" licensees with Class "G" Statewide Firearm licenses, purchasing Concealed Weapon licenses to replace the more expensive Class "G" Statewide Firearm license.[29]

2. Expenditures:

   Indeterminate. There may be a cost to DACS to process additional applicants for licensure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Creating an exception to the eligibility requirements for private investigative and security industry licensees to carry firearms will likely have a positive fiscal impact on these individuals and the businesses they work for. According to DACS:[30]

> This bill would allow armed private investigators and private investigator interns to substitute a concealed weapon license for a Class "G" statewide firearms license. This replacement of a Class "G" license with a concealed weapon license would save armed private investigators and private investigator interns $112.00 every two years by not renewing the required G license. Replacement of the two-year G license with a seven-year concealed weapon license costing $97.00 ($55.00 for the license and $42.00 for the fingerprint background check) would equate to a $294.98 cost savings over the seven-year term of a concealed weapon license. (Two-year G license costing $112.00 divided by 2 years equals $56.00 annual savings per year, versus seven-year concealed weapon license costing $97.00 divided by 7

[29] *Id*.
[30] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2022 HB 1509, (Jan. 24, 2022).

years equals an average annual cost of $13.86 per year. The annual cost difference of $42.14 ($56.00 - $13.86 = $42.14) multiplied by 7 years equals $294.98.

Additional savings in training costs no longer incurred by Class "G" licensees opting to replace the G license with a concealed weapon license would be realized in the above scenario, based on required Class G firearms training that would no longer be incurred. Four hours of annual firearms training are required to renew a G license, or 28 hours of training from a Class "K" firearms instructor over the seven-year term of a concealed weapon license would no longer be incurred.

However, according to DACS, Class "K" Firearms Instructors who provide the qualifying training for the Class "G" Statewide Firearm license would likely experience a reduction in demand for their services from:[31]

- Private investigator and intern applicants; and
- The annual training required for renewing a Class "G" licensee.

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 does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

According to DACS:[32]

This bill would effectively eliminate professional training requirements for armed (Class "G") security officers and private investigators who would be exempted by virtue of holding a concealed weapon license… Class "G" license training is more professional, expansive, and rigorous whereas concealed carry training only requires a showing of competence.

There could be an increase in conflict-of-interest issues with more active law enforcement officers that carry concealed weapon when working as private investigator or security officer… The Florida Commission on Ethics has held that such arrangements may create a continuing or frequently recurring conflict between a law enforcement officer's private interests and the performance of his public duties.

Class "G" licenses and applications would likely decline due to the bill's option of substituting the concealed carry license for both their professional and personal life.

[31] *Id.*
[32] *Id.*

In summary, the enactment of this bill would reduce enforcement jurisdiction by effectively eliminating the traditional Class “G” training and licensure requirements for those relying instead on the concealed weapon license for concealed weapon carrying on duty; and potentially increase conflict-of-interest issues among active law enforcement officers who are private investigators.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to private investigative and security services; amending s. 493.6115, F.S.; revising eligibility requirements for certain licensees to carry firearms; amending s. 493.6305, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (2) and (4) of section 493.6115, Florida Statutes, are amended to read:

493.6115 Weapons and firearms.—

(2)(a) Except as provided in paragraph (b), only Class "C," Class "CC," Class "D," Class "M," Class "MA," or Class "MB" licensees are permitted to bear a firearm, and any such licensee who bears a firearm shall also have a Class "G" license.

(b)1. A Class "C" licensee who does not have a Class "G" license may bear a firearm if the licensee has a license to carry concealed firearms issued pursuant to s. 790.06.

2. A Class "C," Class "CC," Class "D," Class "M," Class "MA," or Class "MB" licensee who does not have a Class "G" license but who is a retired law enforcement officer; who separated from service in good standing; who, before such separation, served as a law enforcement officer for at least 10

years; and who maintains her or his annual firearms proficiency qualification pursuant to the federal Law Enforcement Officers Safety Act, may bear a firearm in the performance of her or his duties.

3. A Class "C," Class "CC," Class "D," Class "M," Class "MA," or Class "MB" licensee who does not have a Class "G" license but who is an active law enforcement officer and who maintains the annual firearms proficiency qualification required by her or his agency, may bear a firearm in the performance of her or his duties.

(4)(a)1. A Class "C" or Class "CC" licensee who is 21 years of age or older and has also been issued a Class "G" license, who has a license to carry concealed firearms, or who meets the requirements of subparagraph (2)(b)2. may carry, in the performance of her or his duties, a concealed firearm.

2. A Class "D" licensee who is 21 years of age or older and has also been issued a Class "G" license or who meets the requirements of subparagraph (2)(b)2. may carry a concealed firearm in the performance of her or his duties under the conditions specified in s. 493.6305(3) and (4).

(b) The Class "G" license must clearly indicate such authority. The authority of any such licensee to carry a concealed firearm is valid in any location throughout the state while performing services within the scope of the license.

Section 2. Subsections (3) and (4) of section 493.6305,

Florida Statutes, are amended to read:

493.6305 Uniforms, required wear; exceptions.—

(3) Class "D" licensees who are authorized to carry a concealed firearm under s. 493.6115(4)(a)2. ~~also Class "G" licensees~~ and who are performing limited, special assignment duties may carry their authorized firearm concealed in the conduct of such duties.

(4) Class "D" licensees who are authorized to carry a concealed firearm under s. 493.6115(4)(a)2. ~~also Class "G" licensees~~ and who are performing bodyguard or executive protection services may carry their authorized firearm concealed while in nonuniform as needed in the conduct of such services.

Section 3. This act shall take effect July 1, 2022.

PCS for HB 577

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 577 Tenant Safety
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 898

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Wright	Anstead

SUMMARY ANALYSIS

The "Florida Residential Landlord and Tenant Act" (the Act) governs the relationship between landlords and tenants under a residential rental agreement. The Act provides landlords with certain rights of entry to the dwelling unit. For example, the landlord may enter a dwelling unit for purposes of repair to the premises, but the landlord must first give "reasonable notice" of **12** hours to a tenant beforehand.

The PCS increases the time period that a landlord must give to a tenant prior to entering the dwelling unit to **24** hours, from 12 hours.

The PCS provides an effective date of July 1, 2022.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Residential Landlord and Tenant Act

Part II of ch. 83, F.S., known as the "Florida Residential Landlord and Tenant Act" (Act), governs the relationship between landlords and tenants under a residential rental agreement.[1]

The act does not apply to:[2]

- Residency or detention in a facility when it is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.
- Occupancy under a contract of sale of a dwelling unit or property of which it is a part.
- Transient occupancy in a public lodging establishment or a mobile home park.
- Occupancy by a holder of a proprietary lease in a cooperative apartment.
- Occupancy by an owner of a condominium unit.

Any right or duty declared in the Act is enforceable by civil action. A right or duty enforced by civil action under the Act does not preclude prosecution for a criminal offense related to the lease or leased property. If either the landlord or the tenant fails to comply with the requirements of the rental agreement or the Act, the aggrieved party may recover the damages caused by the noncompliance.[3] Under certain circumstances, either party may take action to terminate the lease.[4]

Covenant of Quiet Enjoyment

Generally, a tenant is entitled to the right of private, peaceful possession of the dwelling, which includes limited access to the dwelling unit by the landlord.[5] In the absence of inconsistent express covenants, an ordinary lease includes an implied covenant of quiet enjoyment under Florida law,[6] and use of the words "lease" or "demise" in a lease imports a covenant of quiet enjoyment.[7] Thus, a valid ordinary lease of real estate raises an implied covenant of quiet and peaceful enjoyment of the leased premises exercisable against the landlord, unless there is an express covenant of a more limited character inconsistent with the judicially implied covenant of quiet enjoyment.[8]

Landlord's Obligation to Maintain Premises

At all times during a tenancy, the landlord must comply with the requirements of applicable building, housing, and health codes. Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition.[9]

Landlord's Access to the Dwelling Unit

[1] S. 83.41, F.S., provides that part II, ch. 83, F.S., applies to the rental of a dwelling unit.
[2] S. 83.42, F.S.
[3] S. 83.55, F.S.
[4] S. 83.56, F.S.
[5] The Florida Bar, *Consumer Pamphlet: Rights and Duties of Tenants and Landlords*, https://www.floridabar.org/public/consumer/tip014/ (last visited Jan. 25, 2022).
[6] Fla. Jur. 2d Landlord and Tenant § 90. *Stinson, Lyons, Gerlin & Bustamante, P.A. v. Brickell Bldg. 1 Holding Co., Inc.*, 923 F.2d 810 (11th Cir. 1991); *Coral Wood Page, Inc. v. GRE Coral Wood, LP*, 71 So. 3d 251 (Fla. 2d DCA 2011); *Hankins v. Smith*, 103 Fla. 892, 138 So. 494 (1931).
[7] Fla. Jur. 2d Landlord and Tenant § 90. *Hankins*, 138 So. 494.
[8] Fla. Jur. 2d Landlord and Tenant § 90. *McClosky v. Martin*, 56 So. 2d 916 (Fla. 1951); *Hankins*, 138 So. 494.
[9] S. 83.51(1), F.S.

Generally, the landlord is restricted to accessing the dwelling unit under certain scenarios. The landlord may enter the dwelling unit at any time for the protection or preservation of the premises.[10]

The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least **12** hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m.[11]

The tenant may not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.[12] The landlord may enter the dwelling unit when necessary for these purposes under any of the following circumstances:[13]

- With the consent of the tenant;
- In case of emergency;
- When the tenant unreasonably withholds consent; or
- If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

The landlord may not abuse the right of access or use it to harass the tenant.[14]

Miya Marcano

On September 24, 2021, Miya Marcano, a student at Valencia College, went missing from her apartment in Orlando, Florida, where she also worked at the front office. She was later found dead miles from her apartment.[15]

Investigators for the Orange County Sheriff's Office said Marcano was taken from her apartment by Armando Caballero, who was a maintenance worker at the same apartment complex. It is alleged that he used a master key fob for the apartment complex to enter her apartment. Caballero was found dead by apparent suicide a few days after Marcano went missing.[16]

Effect of the Bill

The sponsor has entitled the act "Miya's Law," in memory of Miya Marcano.

The PCS increases the "reasonable notice" time period that a landlord must give to a tenant prior to entering the dwelling unit for purposes of repair of the premises, to **24** hours, from 12 hours.

The PCS provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Provides a short title.
Section 2: Amends s. 83.53, F.S., revising landlord notice requirements for entering a dwelling.

[10] S. 83.53(2), F.S.
[11] *Id*.
[12] S. 83.53(1), F.S.
[13] S. 83.53(2), F.S.
[14] S. 83.53(3), F.S.
[15] Cristobal Reyes, *Miya Marcano's family again blasts Orange sheriff after autopsy released: 'Precious moments' lost*, Orlando Sentinel, Orlando Sentinel (Dec. 28, 2021), https://www.orlandosentinel.com/news/crime/os-ne-miya-marcano-autopsy-response-20211228-svqnw6bdozaghnoijjevdgkgoi-story.html (last visited Jan. 16, 2022); Vanessa Etienne, *Miya Marcano Cause of Death Ruled a 'Homicide by Undetermined Means': Medical Examiner*, People (Dec. 29, 2021) https://people.com/crime/texas-girls-abduction-inspired-amber-alert-26-years-later-case-remains-unsolved/ (last visited Jan. 16, 2022).
[16] Cristobal Reyes, *supra* note 15.

Section 3: Provides an effective date.

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:
None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to tenant safety; providing a short title; amending s. 83.53, F.S.; revising what constitutes reasonable notice for repairs of dwelling units; providing an effective date.

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

Section 1. This act may be cited as "Miya's Law."

Section 2. Subsection (2) of section 83.53, Florida Statutes, is amended to read:

83.53 Landlord's access to dwelling unit.—

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least 24 ~~12~~ hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

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

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

Section 3. This act shall take effect July 1, 2022.

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