

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Regulatory Reform Subcommittee, Thompson, Anstead. Row 2: 2) Ways & Means Committee. Row 3: 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.<sup>1</sup>

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

The term “public lodging establishments” includes transient and nontransient public lodging establishments.<sup>3</sup> The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the 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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

##### **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.

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<sup>1</sup> S. 509.241, F.S.

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

<sup>3</sup> S. 509.013(4)(a), F.S.

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

<sup>5</sup> S. 509.242(1)(c), F.S.

<sup>6</sup> S. 509.013(4)(b)9., F.S.

<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> If no office or lobby is present on the premises of the licensed establishment, the license must be readily available for inspection upon request.<sup>10</sup>

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.<sup>11</sup>

### License Fees

The Division provides the following fee schedule relating to vacation rentals:<sup>12</sup>

- Vacation rentals/collective license.

BASIC FEE	PER UNIT FEE	HEP FEE <sup>13</sup>	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

<sup>8</sup> S. 509.241, F.S.

<sup>9</sup> S. 509.241(3), F.S.

<sup>10</sup> R. 61C-1.002(1), F.A.C.

<sup>11</sup> DBPR, *Division of Hotels and Restaurants Annual Report for FY 2020-2021*,

[http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2020\\_21.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2020_21.pdf) (last visited Jan. 18, 2022).

<sup>12</sup> R. 61C-1.008, F.A.C.

<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> Specialized smoke detectors for the deaf and hearing-impaired must be made available upon request by guests in transient public lodging establishments without charge.<sup>16</sup>

In addition, smoke alarms must be installed in every living unit,<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

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

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<sup>14</sup> See generally s. 509.221, F.S., and R. 61C-1&3, F.A.C.

<sup>15</sup> S. 509.221(3), F.S.

<sup>16</sup> R. 61C-1.004, F.A.C.

<sup>17</sup> S. 509.215(1)(b), F.S.

<sup>18</sup> S. 509.215(1), F.S.

<sup>19</sup> S. 509.142, F.S.

<sup>20</sup> S. 509.141(1), F.S.

<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup>

## 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.<sup>24</sup>

**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.<sup>25</sup>

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

**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.<sup>27</sup>

## 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.<sup>28</sup>

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.<sup>29</sup>

## 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.<sup>30</sup>

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<sup>22</sup> S. 509.141(3), F.S.

<sup>23</sup> S. 509.143(1), F.S.

<sup>24</sup> See generally s. 509.032, F.S., r. 61C-1.002, F.A.C.

<sup>25</sup> *Id.*

<sup>26</sup> See ss. 509.211(3), 509.2112, F.S., and r. 61C-3.001, F.A.C.

<sup>27</sup> DBPR, *Division of Hotels and Restaurants Annual Report for FY 2020-2021*, at 21.

<sup>28</sup> R. 61C-1.002, F.A.C.

<sup>29</sup> S. 509.101(2), F.S.

<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

Prior to the 2011 preemption, several municipalities had created regulations specifically relating to vacation rentals.<sup>33</sup> 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.<sup>34</sup> Subsequent to the enactment of the 2011 legislation, the vacation rental market experienced growth.<sup>35</sup>

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.<sup>36</sup>

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.”<sup>37</sup>

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.<sup>38</sup>

## Recent Activity

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<sup>31</sup> Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> 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.

<sup>34</sup> 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).

<sup>35</sup> 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).

<sup>36</sup> Ch. 2014-71, Laws of Fla., codified in s. 509.032(7)(b), F.S.

<sup>37</sup> S. 509.032(7)(c), F.S.

<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup>

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.<sup>41</sup>

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.<sup>42</sup>

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.<sup>43</sup> 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.<sup>44</sup> 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.<sup>45</sup>

## **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.<sup>46</sup> A condominium is created by recording a declaration in the public records of the county in which the condominium will be located.<sup>47</sup> 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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<sup>39</sup> 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).

<sup>40</sup> S. 70.001, F.S.

<sup>41</sup> CITY OF ANNA MARIA, *Bert J. Harris, Jr., Private Property Rights Protection Act Claim Filings*, [http://www.cityofannamaria.com/residents/bert\\_harris\\_claim.php](http://www.cityofannamaria.com/residents/bert_harris_claim.php) (last visited Jan. 18, 2022).

<sup>42</sup> See Miami Beach City Code, Sec. 142-1111 and 142-905(b).

<sup>43</sup> 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>.

<sup>44</sup> 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).

<sup>45</sup> 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).

<sup>46</sup> S. 718.103(11), F.S.

<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup>

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;<sup>52</sup>
  - 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;<sup>53</sup>
- 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;<sup>54</sup>
- 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;<sup>55</sup> or
  - The sexual predator was designated a sexual predator within 48 hours after such finding is made.<sup>56</sup>

### *Residence*

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<sup>48</sup> S. 719.103(2)(26), F.S.

<sup>49</sup> S. 720.301(9), F.S.

<sup>50</sup> 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).

<sup>51</sup> S. 943.0435(2)(a)1., F.S.

<sup>52</sup> S. 775.21(6)(b), F.S.

<sup>53</sup> *Id.*

<sup>54</sup> S. 775.21(6)(c), F.S.

<sup>55</sup> S. 775.21(6)(e)a., F.S.

<sup>56</sup> 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.<sup>57</sup>

### *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.<sup>58</sup>

## **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**

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<sup>57</sup> S. 775.21, F.S.

<sup>58</sup> 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.,<sup>59</sup> 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.

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<sup>59</sup> 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.<sup>60</sup>

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.<sup>61</sup>

#### 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).<sup>62</sup>

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).<sup>63</sup>

### 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.<sup>64</sup>

<sup>60</sup> Revenue Estimating Conference, Revenue Impact Results, Nov. 5, 2021, [http://edr.state.fl.us/content/conferences/revenueimpact/archives/2022/\\_pdf/Impact1105.pdf](http://edr.state.fl.us/content/conferences/revenueimpact/archives/2022/_pdf/Impact1105.pdf), p. 38, (last visited Jan. 21, 2022).

<sup>61</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2022 SB 512, p. 6 (Oct. 15, 2021).

<sup>62</sup> *Id.* at 10.

<sup>63</sup> Florida Department of Law Enforcement, Agency Analysis of 2022 HB 325, p. 4 (Nov. 15, 2021).

<sup>64</sup> *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.<sup>65</sup>

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>65</sup> *Id.* at 5 and 6.