

<b>Tab 1</b>	<b>SB 294</b> by <b>Bracy</b> ; (Compare to CS/CS/H 00653) Condominium, Cooperative, and Homeowners' Associations					
<b>Tab 2</b>	<b>SB 750</b> by <b>Latvala (CO-INTRODUCERS) Lee, Perry</b> ; (Similar to H 01069) Franchises					
826202	D	S	RCS	RI, Latvala	Delete everything after	04/05 07:52 PM
<b>Tab 3</b>	<b>SB 822</b> by <b>Hutson</b> ; (Identical to H 00473) Intrusion and Burglar Alarms					
<b>Tab 4</b>	<b>SB 830</b> by <b>Baxley</b> ; (Similar to CS/H 00747) Mortgage Brokering					
591686	D	S	RCS	RI, Baxley	Delete everything after	04/05 01:28 PM
<b>Tab 5</b>	<b>SB 1370</b> by <b>Perry</b> ; (Similar to CS/H 00937) Lottery Games					
<b>Tab 6</b>	<b>SB 1372</b> by <b>Perry</b> ; (Similar to CS/H 00227) Electrical and Alarm System Contracting					
519914	A	S	RCS	RI, Perry	Delete L.19 - 23:	04/05 07:07 AM
<b>Tab 7</b>	<b>SB 1520</b> by <b>Latvala</b> ; (Compare to CS/CS/H 00653) Condominium Terminations					
403398	D	S	RCS	RI, Latvala	Delete everything after	04/05 02:45 PM
<b>Tab 8</b>	<b>SB 1682</b> by <b>Garcia (CO-INTRODUCERS) Rodriguez, Artiles</b> ; (Similar to CS/H 01237) Condominiums					
636490	D	S	RCS	RI, Garcia	Delete everything after	04/06 04:52 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**REGULATED INDUSTRIES**

**Senator Hutson, Chair**  
**Senator Hukill, Vice Chair**

**MEETING DATE:** Tuesday, April 4, 2017

**TIME:** 4:00—6:00 p.m.

**PLACE:** *Toni Jennings Committee Room, 110 Senate Office Building*

**MEMBERS:** Senator Hutson, Chair; Senator Hukill, Vice Chair; Senators Benacquisto, Bracy, Brandes, Braynon, Gibson, Perry, Steube, Thurston, and Young

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 294</b> Bracy (Compare CS/CS/H 653, H 6027, CS/S 744)	Condominium, Cooperative, and Homeowners' Associations; Requiring associations to meet specified financial reporting requirements if they fail to provide unit owners or members with requested financial information; providing that associations that fail to provide such information may not exercise a specified reporting option for a specified period, etc.  RI 04/04/2017 Favorable JU RC	Favorable Yeas 10 Nays 0
2	<b>SB 750</b> Latvala (Similar H 1069)	Franchises; Creating the "Protect Florida Small Business Act"; prohibiting a franchisor from terminating a franchise under certain circumstances; prohibiting a franchisor from denying certain persons the opportunity to participate in the ownership of a franchise for a specified period after the death of the franchisee or the person controlling a majority interest; providing that a franchisee must have the opportunity to monetize certain equity from the franchise business under certain circumstances, etc.  RI 04/04/2017 Fav/CS JU RC	Fav/CS Yeas 7 Nays 2
3	<b>SB 822</b> Hutson (Identical H 473)	Intrusion and Burglar Alarms; Providing an exclusion from the requirement for a verification call prior to alarm dispatch for specified premises, etc.  RI 04/04/2017 Favorable CM RC	Favorable Yeas 10 Nays 0
4	<b>SB 830</b> Baxley (Similar CS/H 747)	Mortgage Brokering; Providing an exemption from regulation under provisions for certain securities dealers, investment advisers, and associated persons, etc.  RI 04/04/2017 Fav/CS BI CM RC	Fav/CS Yeas 10 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Regulated Industries

Tuesday, April 4, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 1370</b> Perry (Similar CS/H 937)	Lottery Games; Requiring contracts entered into between the Department of the Lottery and a vendor or retailer of lottery tickets to include a provision that requires the vendor or retailer place or print a specified warning on all lottery tickets, etc.  RI 04/04/2017 Favorable JU RC	Favorable Yeas 7 Nays 3
6	<b>SB 1372</b> Perry (Similar CS/H 227)	Electrical and Alarm System Contracting; Specifying that provisions regulating certified electrical contractors and certified alarm system contractors do not prevent such contractors from acting as a prime contractor or from subcontracting work to other licensed contractors under certain circumstances, etc.  RI 04/04/2017 Fav/CS CA RC	Fav/CS Yeas 10 Nays 0
7	<b>SB 1520</b> Latvala (Compare CS/CS/H 653, H 7055)	Condominium Terminations; Revising the default procedure for the optional termination of a condominium; requiring a plan of termination to be approved by at least 90 percent of the total voting interests of the condominium; revising the requirement on who must be paid fair market value for his or her unit after rejecting a plan of termination, etc.  RI 04/04/2017 Fav/CS JU RC	Fav/CS Yeas 9 Nays 1
8	<b>SB 1682</b> Garcia (Similar CS/H 1237)	Condominiums; Prohibiting an attorney from representing a board under certain conditions; providing board member term limits; authorizing, rather than requiring, the division to employ full-time attorneys to conduct certain arbitration hearings; providing that certain activities constitute fraudulent voting activities related to association elections, etc.  JU 03/22/2017 Favorable RI 04/04/2017 Fav/CS RC	Fav/CS Yeas 8 Nays 2

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SB 294

INTRODUCER: Senator Bracy

SUBJECT: Condominium, Cooperative, and Homeowners' Associations

DATE: April 4, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	<b>Favorable</b>
2.			JU	
3.			RC	

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## **I. Summary:**

SB 294 provides substantively identical financial reporting requirements for condominium, cooperative, and homeowners' associations. Under the bill, associations that fail to provide the unit or parcel owner with a copy of the prior year's financial statement, after receipt of a written request, must provide the division with a copy of the required financial statement for the next three consecutive years. The association is also prohibited from waiving the reporting requirement during those years.

The bill repeals the provisions that require condominium, cooperative, and homeowners' associations with fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures. Under the bill, an association with fewer than 50 units or parcels is required to prepare a compiled, reviewed, or audited financial statement if the association's total annual revenue is more than \$150,000.

The effective date of the bill is July 1, 2017.

## **II. Present Situation:**

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.<sup>1</sup> The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.<sup>2</sup> After control of the condominium is transferred from the developer to

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<sup>1</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>2</sup> *Id.*



the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.<sup>3</sup> For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.<sup>4</sup>

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.<sup>5</sup>

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. In addition, the division is authorized to petition a court to appoint a receiver or conservator to implement a court order, or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.<sup>6</sup>

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

In regards to homeowners' associations, the division's authority is limited to arbitration of recall election disputes.<sup>7</sup>

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<sup>3</sup> Section 718.501(1), F.S.

<sup>4</sup> Section 718.501(1), F.S.

<sup>5</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> See s. 720.306(9)(c), F.S.

## **Condominium**

A condominium is a “form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”<sup>8</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>9</sup> A declaration is similar to a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.<sup>10</sup>

A condominium is administered by a board of directors referred to as a “board of administration.”<sup>11</sup>

## **Cooperative Associations**

Section 719.103(12), F.S., defines a “cooperative” to mean:

that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.<sup>12</sup>

## **Homeowners’ Associations**

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.<sup>13</sup>

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory

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<sup>8</sup> Section 718.103(11), F.S.

<sup>9</sup> Section 718.104(2), F.S.

<sup>10</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>11</sup> Section 718.103(4), F.S.

<sup>12</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>13</sup> See s. 720.302(1), F.S.

condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”<sup>14</sup> Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.<sup>15</sup>

Homeowners’ associations are administered by a board of directors whose members are elected.<sup>16</sup> The powers and duties of homeowners’ associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.<sup>17</sup> The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.<sup>18</sup>

### **Chapters 718, 719, and 720, F.S.**

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners’ associations, provide for the governance of these associations. The chapters delineate requirements for notices of meetings,<sup>19</sup> recordkeeping requirements, including which records are accessible to the members of the association,<sup>20</sup> and financial reporting.<sup>21</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

### **Official Records**

Condominium, cooperative associations, and homeowners’ associations are required to maintain the official records of an association. The provisions regarding access to records are similar for each type of association.

Current law delineates the types of records that the association must maintain and identifies records that are and are not accessible to association members. The associations are required to maintain official records for at least seven years.<sup>22</sup>

The official records of the association must be open to inspection by any association member or the authorized representative of such member at all reasonable times. Members of the association have the right to inspect the records, and to make copies or obtain copies, at the reasonable expense, if any, of the member.

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<sup>14</sup> Section 720.301(9), F.S.

<sup>15</sup> Section 720.302(5), F.S.

<sup>16</sup> See ss. 720.303 and 720.307, F.S.

<sup>17</sup> See ss. 720.301 and 720.303, F.S.

<sup>18</sup> Section 720.303(1), F.S.

<sup>19</sup> See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners’ associations.

<sup>20</sup> See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners’ associations.

<sup>21</sup> See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners’ associations.

<sup>22</sup> See s. 718.111(13)(b), F.S., for condominiums, s. 719.104(2)(b), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners’ associations.

If the association fails to provide the requested records within 10 working days after receipt of a written request from a member, it is a rebuttable presumption that the association willfully failed to comply with the access to records requirement. A member of the association is entitled to actual damages or minimum damages for the association's willful failure to comply with a records request. Minimum damages are \$50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request.

If a condominium or cooperative association fails to permit inspection, the person prevailing in an action to enforce the access to records requirement is entitled to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Current law does not provide a right to attorney fees expressly related to failure to provide requested records, but a member of a homeowners' association, if he or she is the prevailing party in litigation against the association, is entitled to recover reasonable attorney fees and costs, and may also recover additional amounts determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund the expenses of the litigation.

### **Financial Reporting**

Sections 718.11(13), 719.104(4), and 720.303(7), F.S., provide the financial reporting requirements for condominium, cooperative, and homeowners' associations, respectively. These provisions for each association type are comparable.

Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the board must complete, or contract with a third party to complete, the financial statements. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

Condominium and cooperative associations may not waive the financial reporting requirements for more than three consecutive years.<sup>23</sup> A cooperative association may waive financial reporting for the fiscal year by a vote of majority of the voting interests of the association present at a duly called meeting of the association.<sup>24</sup> Chapter 718, F.S., does not provide the process for waiving financial reporting requirements in condominium associations.

The type of financial reporting that an association must perform is based on the association's total annual revenue. An association with total annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- Between \$150,000 and less than \$300,000 must prepare compiled financial statements.<sup>25</sup>

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<sup>23</sup> Sections 718.111(13) and 718.104(4)(b)4., F.S. Chapter 720, F.S., does not authorize homeowners' associations to waive financial reporting requirements.

<sup>24</sup> Section 718.104(4)(b)4., F.S.

<sup>25</sup> A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with Generally Accepted Accounting Principals (GAAP). Compiled financial statements must conform to the

- At least \$300,000 but less than \$500,000 must prepare reviewed financial statements.<sup>26</sup>
- \$500,000 or more must prepare audited financial statements.<sup>27</sup>

An association of fewer than 50 units or parcels, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures. Provisions specify the information that must be disclosed in the report of cash receipts and expenditures. Cooperative and homeowners' associations may provide otherwise in their governing documents.

If approved by a majority of voting interests present at a duly called meeting, an association may prepare or cause to be prepared:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

### III. Effect of Proposed Changes:

Sections 718.11(13), 719.104(4), and 720.303(7), provide the financial reporting requirements for condominium, cooperative, and homeowners' associations, respectively. The bill provides substantively identical requirements for each type of association.

Under the bill, associations that fail to provide the unit or parcel owner with a copy of the prior year's financial statement, after receipt of a written request, must provide the division with a copy of the required financial statement for the next three consecutive years. The association is also prohibited from waiving the reporting requirement during those years.

The bill repeals s. 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S., the provisions that require condominium, cooperative, and homeowners' associations, respectively, with fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures. Under the bill, an association with fewer than 50 units or parcels is required to prepare a compiled, reviewed, or audited financial statement if the association's total annual revenue is more than \$150,000.

The effective date of the bill is July 1, 2017.

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American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3<sup>rd</sup> ed. (Barron's 2000).

<sup>26</sup> A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

<sup>27</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

Condominium, cooperative, and homeowners' associations that fail to provide the unit or parcel owner with a copy of the prior year's financial statement may incur additional expenses if prohibited from waiving the reporting requirement for three consecutive years.

The bill may cause a negative impact on condominium, cooperative and homeowners' associations operating fewer than 50 units, if the association is required to hire an accountant to complete a compiled, reviewed, or audited financial statement instead of the report of cash receipts and expenditures required under current law.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

SB 294 amends s. 718.111(13), F.S., to provide that a condominium association that fails to give the unit owner with a copy of the prior year's financial statement, after receipt of a written request, must provide the division with a copy of the required financial statement for the next three consecutive years, and is also prohibited from waiving the reporting requirement during those years.

SB 1682 by Senator Garcia creates s. 718.111(13)(e), F.S., to provide that a condominium unit owner may give notice to the Division of Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation that an association has failed to mail or hand deliver to the unit owner a copy of the most recent financial statement after a request. The division must then give the association notice that it must comply with the request. If the association fails to comply with that request within five business days, the association may not waive the financial reporting requirement.

The provision in SB 1682 differs from the provision in this bill. SB 294 does not require the division to give notice to the association that it must comply with the unit owner's request and does not require that the association comply with the request within five days before the association is prohibited from waiving the required financial statement for failing to comply with the request.

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

This bill substantially amends the following sections of the Florida Statutes: 718.111, 719.104, and 720.303.

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

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

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

None.

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

None.

## The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Regulated Industries  
**ITEM:** SB 294  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, April 4, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** 110 Senate Office Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting



By Senator Bracy

11-00364-17

2017294\_\_

1 A bill to be entitled  
2 An act relating to condominium, cooperative, and  
3 homeowners' associations; amending ss. 718.111,  
4 719.104, and 720.303, F.S.; requiring associations to  
5 meet specified financial reporting requirements if  
6 they fail to provide unit owners or members with  
7 requested financial information; providing that  
8 associations that fail to provide such information may  
9 not exercise a specified reporting option for a  
10 specified period; deleting exemptions for certain  
11 associations from specified reporting requirements;  
12 providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. Subsection (13) of section 718.111, Florida  
17 Statutes, is amended to read:

18 718.111 The association.—

19 (13) FINANCIAL REPORTING.—Within 90 days after the end of  
20 the fiscal year, or annually on a date provided in the bylaws,  
21 the association shall prepare and complete, or contract for the  
22 preparation and completion of, a financial report for the  
23 preceding fiscal year. Within 21 days after the final financial  
24 report is completed by the association or received from the  
25 third party, but not later than 120 days after the end of the  
26 fiscal year or other date as provided in the bylaws, the  
27 association shall mail to each unit owner at the address last  
28 furnished to the association by the unit owner, or hand deliver  
29 to each unit owner, a copy of the financial report or a notice  
30 that a copy of the financial report will be mailed or hand  
31 delivered to the unit owner, without charge, upon receipt of a  
32 written request from the unit owner. If, upon receipt of a

11-00364-17

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33 written request, an association does not provide a copy of the  
34 prior year's financial report to the unit owner, the association  
35 shall provide to the division the financial reporting required  
36 under this section for the next 3 consecutive years and may not  
37 exercise the reporting option authorized in paragraph (d) for  
38 those years. The division shall adopt rules setting forth  
39 uniform accounting principles and standards to be used by all  
40 associations and addressing the financial reporting requirements  
41 for multicondominium associations. The rules must include, but  
42 not be limited to, standards for presenting a summary of  
43 association reserves, including a good faith estimate disclosing  
44 the annual amount of reserve funds that would be necessary for  
45 the association to fully fund reserves for each reserve item  
46 based on the straight-line accounting method. This disclosure is  
47 not applicable to reserves funded via the pooling method. In  
48 adopting such rules, the division shall consider the number of  
49 members and annual revenues of an association. Financial reports  
50 shall be prepared as follows:

51 (a) An association that meets the criteria of this  
52 paragraph shall prepare a complete set of financial statements  
53 in accordance with generally accepted accounting principles. The  
54 financial statements must be based upon the association's total  
55 annual revenues, as follows:

56 1. An association with total annual revenues of \$150,000 or  
57 more, but less than \$300,000, shall prepare compiled financial  
58 statements.

59 2. An association with total annual revenues of at least  
60 \$300,000, but less than \$500,000, shall prepare reviewed  
61 financial statements.

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62 3. An association with total annual revenues of \$500,000 or  
63 more shall prepare audited financial statements.

64 (b)1. An association with total annual revenues of less  
65 than \$150,000 shall prepare a report of cash receipts and  
66 expenditures.

67 ~~2. An association that operates fewer than 50 units,~~  
68 ~~regardless of the association's annual revenues, shall prepare a~~  
69 ~~report of cash receipts and expenditures in lieu of financial~~  
70 ~~statements required by paragraph (a).~~

71 2.3. A report of cash receipts and disbursements must  
72 disclose the amount of receipts by accounts and receipt  
73 classifications and the amount of expenses by accounts and  
74 expense classifications, including, but not limited to, the  
75 following, as applicable: costs for security, professional and  
76 management fees and expenses, taxes, costs for recreation  
77 facilities, expenses for refuse collection and utility services,  
78 expenses for lawn care, costs for building maintenance and  
79 repair, insurance costs, administration and salary expenses, and  
80 reserves accumulated and expended for capital expenditures,  
81 deferred maintenance, and any other category for which the  
82 association maintains reserves.

83 (c) An association may prepare, without a meeting of or  
84 approval by the unit owners:

85 1. Compiled, reviewed, or audited financial statements, if  
86 the association is required to prepare a report of cash receipts  
87 and expenditures;

88 2. Reviewed or audited financial statements, if the  
89 association is required to prepare compiled financial  
90 statements; or

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91 3. Audited financial statements if the association is  
92 required to prepare reviewed financial statements.

93 (d) If approved by a majority of the voting interests  
94 present at a properly called meeting of the association, an  
95 association may prepare:

96 1. A report of cash receipts and expenditures in lieu of a  
97 compiled, reviewed, or audited financial statement;

98 2. A report of cash receipts and expenditures or a compiled  
99 financial statement in lieu of a reviewed or audited financial  
100 statement; or

101 3. A report of cash receipts and expenditures, a compiled  
102 financial statement, or a reviewed financial statement in lieu  
103 of an audited financial statement.

104  
105 Such meeting and approval must occur before the end of the  
106 fiscal year and is effective only for the fiscal year in which  
107 the vote is taken, except that the approval may also be  
108 effective for the following fiscal year. If the developer has  
109 not turned over control of the association, all unit owners,  
110 including the developer, may vote on issues related to the  
111 preparation of the association's financial reports, from the  
112 date of incorporation of the association through the end of the  
113 second fiscal year after the fiscal year in which the  
114 certificate of a surveyor and mapper is recorded pursuant to s.  
115 718.104(4)(e) or an instrument that transfers title to a unit in  
116 the condominium which is not accompanied by a recorded  
117 assignment of developer rights in favor of the grantee of such  
118 unit is recorded, whichever occurs first. Thereafter, all unit  
119 owners except the developer may vote on such issues until

11-00364-17

2017294\_\_

control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.

Section 2. Paragraphs (a) and (c) of subsection (4) of section 719.104, Florida Statutes, are amended to read:

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

(4) FINANCIAL REPORT.—

(a) Within 90 days following the end of the fiscal or calendar year or annually on such date as provided in the bylaws of the association, the board of administration shall prepare and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. If, upon receipt of a written request, an association does not provide a copy of the prior year's financial report to the member, the association shall provide to the division the financial reporting required under this section for the next 3 consecutive years and may not exercise the reporting option authorized in paragraph (e) for those years. The division shall

11-00364-17

2017294\_\_

149 adopt rules setting forth uniform accounting principles,  
150 standards, and reporting requirements.

151 (c)1. An association with total annual revenues of less  
152 than \$150,000 shall prepare a report of cash receipts and  
153 expenditures.

154 ~~2. An association in a community of fewer than 50 units,~~  
155 ~~regardless of the association's annual revenues, shall prepare a~~  
156 ~~report of cash receipts and expenditures in lieu of the~~  
157 ~~financial statements required by paragraph (b), unless the~~  
158 ~~declaration or other recorded governing documents provide~~  
159 ~~otherwise.~~

160 2.3. A report of cash receipts and expenditures must  
161 disclose the amount of receipts by accounts and receipt  
162 classifications and the amount of expenses by accounts and  
163 expense classifications, including the following, as applicable:  
164 costs for security, professional, and management fees and  
165 expenses; taxes; costs for recreation facilities; expenses for  
166 refuse collection and utility services; expenses for lawn care;  
167 costs for building maintenance and repair; insurance costs;  
168 administration and salary expenses; and reserves, if maintained  
169 by the association.

170 Section 3. Subsection (7) of section 720.303, Florida  
171 Statutes, is amended to read:

172 720.303 Association powers and duties; meetings of board;  
173 official records; budgets; financial reporting; association  
174 funds; recalls.—

175 (7) FINANCIAL REPORTING.—Within 90 days after the end of  
176 the fiscal year, or annually on the date provided in the bylaws,  
177 the association shall prepare and complete, or contract with a

11-00364-17

2017294\_\_

178 third party for the preparation and completion of, a financial  
179 report for the preceding fiscal year. Within 21 days after the  
180 final financial report is completed by the association or  
181 received from the third party, but not later than 120 days after  
182 the end of the fiscal year or other date as provided in the  
183 bylaws, the association shall, within the time limits set forth  
184 in subsection (5), provide each member with a copy of the annual  
185 financial report or a written notice that a copy of the  
186 financial report is available upon request at no charge to the  
187 member. If, upon receipt of a written request, an association  
188 does not provide a copy of the prior year's financial report to  
189 the member, the association shall provide to the division the  
190 financial reporting required under this section for the next 3  
191 consecutive years and may not exercise the reporting option  
192 authorized in paragraph (d) for those years. Financial reports  
193 shall be prepared as follows:

194 (a) An association that meets the criteria of this  
195 paragraph shall prepare or cause to be prepared a complete set  
196 of financial statements in accordance with generally accepted  
197 accounting principles as adopted by the Board of Accountancy.  
198 The financial statements shall be based upon the association's  
199 total annual revenues, as follows:

200 1. An association with total annual revenues of \$150,000 or  
201 more, but less than \$300,000, shall prepare compiled financial  
202 statements.

203 2. An association with total annual revenues of at least  
204 \$300,000, but less than \$500,000, shall prepare reviewed  
205 financial statements.

206 3. An association with total annual revenues of \$500,000 or

11-00364-17

2017294\_\_

more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.~~

2.3. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall



11-00364-17

2017294\_\_

provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Section 4. This act shall take effect July 1, 2017.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-4-2017

Meeting Date

294

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title \_\_\_\_\_

Address 106 E. College Ave #1200

Street

Tallahassee

City

State

32301

Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Cyber Citizens

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/2017

Meeting Date

294

Bill Number (if applicable)

Topic Condominium, Home Cooperatives, Home Owners

Amendment Barcode (if applicable)

Name Melanie Bostick

Job Title Vice President

Address 113 E. College Ave

Street

Tallahassee

City

FL

State

32301

Zip

Phone (850) 841-1726

Email melanie@libertypartnersfl.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Institute of CPAs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: CS/SB 750

INTRODUCER: Regulated Industries Committee and Senator Latvala and others

SUBJECT: Franchises

DATE: April 4, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	<b>Fav/CS</b>
2.			JU	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 750 creates the “Protect Florida Small Business Act” (act). The act regulates the conduct of franchisors and their representatives to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other abuses upon franchisees in Florida. The bill addresses requirements for sale, transfer, or assignment of franchises, and for the mandatory repurchase by a franchisor of a franchise or an interest in a franchise, and for the repurchase of certain assets, including inventory, supplies, equipment, goodwill, and furnishings, upon termination, nonrenewal, or expiration of a franchise.

The bill provides that a franchise agreement in violation of any provision in the act is void and unenforceable, as well as any provision that restricts the location (venue) of an action related to a claim arising under a franchise agreement that involves franchisees who are residents of Florida, or a business entity established in Florida, or a franchise either operating or to be operated in Florida. Furthermore, the bill provides the act does not apply to a franchise agreement between a Florida franchisor and a franchisee that was not a resident of Florida when the franchise agreement was signed or a business entity established in Florida or involving a franchise either operating or to be operated in Florida, even if the agreement says Florida law applies.

CS/SB 750 removes the applicability of the Florida Franchise Act (s. 817.416, F.S.) from franchises entered into, renewed, amended, or revised on or after the effective date of the act.

The bill has an indeterminate fiscal impact on state government. *See* Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

## II. Present Situation:

The regulation of franchising in Florida is addressed in multiple provisions of Florida law. Chapter 817, F.S. relating to Fraudulent Practices, includes provisions concerning False Pretenses and Frauds.<sup>1</sup>

### *Florida Franchise Act*

Section 817.416, F.S., deals with requirements for the relationship between a franchisee and a franchisor.<sup>2</sup> That statute defines the term “franchise or distributorship” to mean:

[A] contract or agreement, either expressed or implied, whether oral or written, between two or more persons:

1. Wherein a commercial relationship of definite duration or continuing indefinite duration is involved;
2. Wherein one party, hereinafter called the “franchisee,” is granted the right to offer, sell, and distribute goods or services manufactured, processed, distributed or, in the case of services, organized and directed by another party;
3. Wherein the franchisee as an independent business constitutes a component of franchisor’s distribution system; and
4. Wherein the operation of the franchisee’s business franchise is substantially reliant on franchisors for the basic supply of goods.<sup>3</sup>

The term “goods,” means “any article or thing without limitation, or any part of such article or thing, including any article or thing used or consumed by a franchisee in rendering a service established, organized, directed, or approved by a franchisor.”<sup>4</sup>

It is unlawful for any person selling or establishing a franchise or distributorship to intentionally:

- Misrepresent the prospects or chances for success of a proposed or existing franchise or distributorship;
- Misrepresent, by failure to disclose or otherwise, the known required total investment for such franchise or distributorship; or
- Misrepresent, or fail to disclose efforts to sell or establish more franchises or distributorships than is reasonable to expect the market or market area for the franchise or distributorship to sustain.<sup>5</sup>

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<sup>1</sup> *See* part I of ch. 817, F.S.

<sup>2</sup> Section 817.416, F.S. has not been amended since 1971. *See* ch. 71-61, Laws of Fla. While popularly referred as the “Florida Franchise Act,” the law does not cite s. 817.416, F.S., as such.

<sup>3</sup> *See* s. 817.416(1)(b), F.S.

<sup>4</sup> Section 817.416(1)(c), F.S.

<sup>5</sup> *See* s. 817.416(2), F.S.

The execution or carrying out of a scheme, plan, or corporate organization in violation of s. 817.416, F.S., if knowledge or intent is proved, is a second degree misdemeanor.<sup>6</sup>

In addition, a person who proves a violation of s. 817.416, F.S., may be granted a judgment for all moneys invested in a franchise or distributorship. Upon such a showing of proof, a court may award the successful plaintiff reasonable attorney's fees and must award reasonable costs incurred in bringing the action.<sup>7</sup>

The Department of Legal Affairs, or the Department of Legal Affairs and the Department of Agriculture and Consumer Services jointly, on behalf of the people of Florida, may sue for injunctive relief against franchise or distributorship plans or activities that engage in the intentional misrepresentations described above.<sup>8</sup>

### ***The Florida Sale of Business Opportunities Act***

The Florida Sale of Business Opportunities Act (SBOA)<sup>9</sup> requires persons offering business opportunities to make specified disclosures about the business to a prospective purchaser.<sup>10</sup> The required disclosures must be made if the purchaser is required to pay an initial fee or sum of money exceeding \$500 to the seller, and if the seller represents that the seller:<sup>11</sup>

- Will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, currency or card operated equipment, or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller;
- Will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part the supplies, services, or chattels sold to the purchaser;
- Guarantees a partial or full refund to the seller; or
- Provides a sales program or marketing program, excepting a sales or marketing program made in conjunction with the licensing of a registered trademark or service mark.

A “business opportunity” does not include the sale of ongoing businesses to no more than five purchasers, the sale of not-for-profit demonstration equipment, materials, or samples for a price that does not exceed \$500 or any sales training course offered by the seller the cost of which does not exceed \$500, or the sale or lease of laundry and drycleaning equipment.<sup>12</sup>

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<sup>6</sup> Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

<sup>7</sup> See s. 817.416(3), F.S.

<sup>8</sup> See s. 817.416(4), F.S.

<sup>9</sup> Part VII of ch. 559

<sup>10</sup> Section 559.803, F.S.

<sup>11</sup> Section 559.801(1)(a), F.S.

<sup>12</sup> Section 559.801(1)(b), F.S.

The sale of a franchise is exempt from the required disclosures if the franchise satisfies the Federal Trade Commission's (FTC) definition of a franchise<sup>13</sup> and applies for the exemption with the Department of Agriculture and Consumers (DACS).<sup>14</sup>

The FTC defines "franchise" to mean any continuing commercial relationship or arrangement in which the purchaser's business uses the trademark of the seller's business, the seller exercises significant control over how the business operates, and the purchaser pays a fee to the seller.<sup>15</sup>

The application for the exemption through the DACS requires only the name of the applicant, the name of the franchise and the name under which the applicant intends to, or does, transact business, if different, the applicant's principal business address, and the applicant's federal employer identification number.<sup>16</sup>

### ***Federal Trade Commission Regulations Affecting Franchises***

The Federal Trade Commission's rule on franchises gives prospective franchise purchasers information to weigh the risks and benefits of an investment in a franchise.<sup>17</sup> The rule requires franchisors to provide all potential franchisees with a disclosure document with 23 specific items of information about the offered franchise, its officers, and other franchisees.<sup>18</sup> The FTC Compliance Guide provides a sample disclosure document and general instructions concerning the mandatory disclosures.<sup>19</sup>

### **Florida Deceptive and Unfair Trade Practices Act**

Part II of ch. 501, F.S., the "Florida Deceptive and Unfair Trade Practices Act" (FDUTPA) addresses protection of the public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.<sup>20</sup>

Section 501.203(2), F.S., addresses who is authorized to enforce the FDUTPA (enforcing authority), which includes the:

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<sup>13</sup> See *Federal Trade Commission, Franchise Rule, 16 CFR, Part 436 Compliance Guide*, (FTC Compliance Guide) at : <https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-compliance-guide.pdf> (last visited Mar. 31, 2017). The FTC Compliance Guide provides a sample disclosure document and general instructions. See <https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-compliance-guide.pdf> (last visited Mar. 31, 2017), at pages 34-154.

<sup>14</sup> See s. 559.803, F.S.

<sup>15</sup> 16 C.F.R. s. 436.1(h) (2017).

<sup>16</sup> Section 559.803(3), F.S., and Florida Admin. R. 5J-10.002 (2012) The form for the application is available at the DACS website: <http://www.freshfromflorida.com/Business-Services/Sellers-of-Business-Opportunities> (last visited March 31, 2017).

<sup>17</sup> See 16 C.F.R. Part.436.1(h). See also <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/franchise-rule> (last visited Mar. 31, 2017).

<sup>18</sup> See <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/franchise-rule> (last visited Mar. 31, 2017).

<sup>19</sup> *Id.* at pages 34-154.

<sup>20</sup> See s. 501.2014(1), F.S.

- Office of the state attorney when a violation occurs in or affects the judicial circuit under the jurisdiction of that state attorney; or
- Department of Legal Affairs, if the violation occurs in or affects more than one judicial circuit, or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

The enforcing authority may pursue actions:

- To obtain a declaratory judgment that an act or practice violates the FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate, the FDUTPA; and
- For the actual damages caused by an act or practice in violation of the FDUTPA, on behalf of one or more consumers or governmental entities, except that damages are not recoverable against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated the FDUTPA.<sup>21</sup>

Any person, firm, corporation, association, or entity, or any agent or employee of such persons, who is willfully using, or has willfully used, a method, act, or practice declared unlawful, or who is willfully violating any of the rules of the Department of Agriculture and Consumer Services (DACS) adopted under part II of ch. 501, F.S., is liable for a civil penalty of not more than \$10,000 for each such violation.<sup>22</sup>

Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule. The civil penalty may be recovered in any action brought under FDUTPA by the enforcing authority; or the enforcing authority may terminate any investigation or action upon the agreement to pay a civil penalty by the person, firm, corporation, association, or entity, or their agent or employee.<sup>23</sup>

The DACS or the court may waive a civil penalty if the person, firm, corporation, association, or entity, or the agent or employee of the foregoing, has previously made full restitution or reimbursement or has paid actual damages to the consumers or governmental entities who have been injured by the unlawful act or practice or rule violation.<sup>24</sup> If civil penalties are assessed in any litigation, the enforcing authority is entitled to reasonable attorney's fees and costs; a civil penalty accrues to the state.<sup>25</sup>

Violations of the FDUTPA involving senior citizens, those with disabilities and active duty or veteran members of the United States Armed Forces may result in penalties of not more than \$15,000 for each violation.<sup>26</sup>

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<sup>21</sup> See s. 501.207(1), F.S.

<sup>22</sup> See s. 501.2075, F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

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

<sup>26</sup> See s. 501.2077, F.S.



### III. Effect of Proposed Changes:

**Section 1** of the bill provides that the act may be cited as the “Protect Florida Small Business Act” (act).

The act regulates the conduct of franchisors and their representatives to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other actions taken as to franchisees in Florida.

**Section 2** of the bill sets forth legislative findings and intent that the welfare of franchisees, including the success and failure of their franchise businesses, affects the state economy and the public, and requires promotion of fair business relations between franchisees and franchisors, and protection of franchisees against unfair treatment by franchisors.

**Section 3** of the bill creates s. 686.103, F.S., to define the following terms:

“Affiliate” means a person controlling, controlled by, or under common control with another person or, in the case of a business entity, such entity’s officer, director, or other person in control of the activities of such entity.

- “Area franchise” means a contract or agreement, expressed or implied, written or oral, regardless of whether the contract or agreement is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, between a franchisor and another person through which that person is granted the right, for consideration in whole or in part for such right:
  - To sell or negotiate the sale of a franchise in the name or on behalf of the franchisor; or
  - To become an area developer and develop a franchise for the benefit of that person or that person’s affiliates.
- “Area franchisee” means the owner of an area franchise.

“Franchise” or “franchise agreement” means a contract or agreement, expressed or implied, written or oral, regardless of whether the contract or agreement is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, for a definite or indefinite time, between two or more persons by which:

- A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor;
- The operation of the franchise business pursuant to that marketing plan or system is substantially associated with the franchisor’s trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and
- The franchisee is required to pay, directly or indirectly, a franchise fee.
- “Franchise” or “franchise agreement” includes an area franchise.
- “Franchise” or “franchise agreement” does not include any of the following:
  - A franchise governed by the Agricultural Equipment Manufacturers and Dealers Act.

- Any activity governed by ss. 686.501-686.506, F.S., pertaining to art dealers.
  - A franchise governed by the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act.
  - A motor vehicle franchise or agreement governed by ss. 320.60-320.70, F.S., including a recreational vehicle franchise or agreement governed by ss. 320.3201-320.3211, F.S.
  - A business relationship between a beer distributor and a manufacturer governed by s. 563.022, F.S.
  - A professional sports franchise as described in s. 288.11625(2)(c), F.S.
- “Franchise business” means a business unit that is owned or operated by a franchisee and that is subject to a marketing plan or system prescribed by the franchise.
  - “Franchise fee” means a fee or charge greater than \$100 annually which a franchisee is required to pay or agrees to pay, directly or indirectly, to the franchisor for the right to enter into or continue a franchise, including, but not limited to, a payment for goods or services. However, the term does not include a fee or charge that a franchisee pays or agrees to pay the franchisor for goods at a bona fide wholesale price, if no obligation is imposed upon the franchisee to purchase or pay for a quantity of goods in excess of that which a reasonable person normally would purchase by way of a starting inventory or supply or to maintain an ongoing inventory or supply.
  - “Franchisee” means a person to whom a franchise is offered or granted.
  - “Franchisor” means a person who grants a franchise to a franchisee.
  - “Fraud” means and includes actual fraud or constructive fraud as normally defined, in addition to the following:
    - A misrepresentation in any manner, whether intentionally false or arising from negligence, of a material fact.
    - A promise or representation not made honestly and in good faith.
    - An intentional failure to disclose a material fact.
    - Any artifice employed to deceive another.
  - “Person” means a natural person, corporation, limited liability company, association, partnership, trust, or other business entity and, in the case of a business entity, includes any other affiliate of such entity.
  - “Sale” means and includes the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, or mortgage in any manner or form, whether by transfer in trust or otherwise, of any goods or interest therein, or of any franchise related thereto, for a consideration, and any option, subscription or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether in written or oral form, for a consideration.

**Section 4** of the bill creates s. 686.104, F.S., relating to terminations or nonrenewals of franchises. Except as otherwise provided in the act, a franchisor may not terminate or refuse to

renew a franchise except for good cause. If a franchise is terminated without good cause, then that action constitutes an unfair termination.

With limited exceptions, good cause is limited to the failure of the franchisee to substantially comply with the reasonable and material requirements imposed upon the franchisee by the franchise agreement after being given notice at least 90 days in advance of the termination and a reasonable opportunity of not less than 60 days after the date of the notice of noncompliance, to cure the failure. If the franchisee cures the failure within the time given to cure, the termination notice is void.

An immediate notice of termination may be given to a franchisee by a franchisor without an opportunity to cure if, during the period in which the franchise is in effect, any of the following events, relevant to the franchise, occurs:

- The franchisee has been judicially determined to be insolvent, has had all or a substantial part of its assets assigned to or for the benefit of any creditor, or has admitted its inability to pay its debts as they come due.
- The franchisee abandons, by failing to operate, the franchise business for 10 consecutive days during which, under the terms of the franchise, the franchisee is required to operate the franchise business, unless such failure to operate is due to an act of God; a work stoppage; a strike or labor difficulty; a fire, flood, hurricane, or sinkhole; or other causes beyond the franchisee's control.
- The franchisor and franchisee, within 30 days after termination or nonrenewal, agree in writing to terminate the franchise. The franchisee fails, for a period of 10 days after a notice of noncompliance, to comply with any federal, state, or local law or regulation, including, but not limited to, any health, safety, building, and labor law or regulation applicable to the operation of the franchise.
- A levy of execution has been made on the license granted by the franchise or on a property used in the franchise business and is not discharged within 5 days after such levy.
- The franchisee is convicted of a felony that significantly, directly, and adversely affects the operation of the franchise business.
- The franchisor makes a reasonable determination that continued operation of the franchise business by the franchisee will result in imminent and substantial danger to public health or safety.

**Section 5** of the bill creates s. 686.105, F.S., relating to expiration of a franchise agreement. A franchise agreement, regardless of its stated term of years, is deemed to be continuing, and a franchisor must provide written notice to the franchisee of the franchisor's intent not to extend the agreement beyond its expiration date at least 180 days before the expiration date unless:

- Termination of the franchise agreement is authorized under proposed s. 686.104, F.S., created by the bill.
- The franchisor and franchisee agree in writing, before the expiration of the franchise agreement, not to extend the franchise.
- The franchisor completely withdraws from directly or indirectly distributing its products or services in the geographic market served by the franchisee.
- The franchisor may permit the franchise agreement to expire, if upon 180 days written notice before the agreement's expiration, the franchisor agrees not to enforce against the franchisee

any covenant not to compete with the franchisor or with other franchisees of the franchisor, and the nonrenewal of the franchise is not for the purpose of converting the franchise business to operation by an employee, affiliate, or agent of the franchisor.

As a condition of an extension of a franchise agreement, the franchisor may require that the franchisee meet the reasonable qualifications for new franchisees that exist at the time of extension and execute a new franchise agreement incorporating terms and fees for new franchises that exist at the time of extension.

**Section 6** of the bill creates s. 686.106, F.S., concerning sales, transfers, and assignments of franchises, including rights of first refusal.

A franchisor may not deny the surviving spouse, heir, or estate of a deceased franchisee (the survivors), or of the person controlling a majority interest in the franchisee, the opportunity to participate in the ownership of the franchise or franchise business under a valid franchise agreement for at least 180 days after the death of the franchisee or a person controlling a majority interest in the franchisee (the status quo period). During the status quo period, the survivors must either meet all of the existing reasonable qualifications for a purchaser of a franchise or must sell, transfer, or assign the franchise to a person who meets the franchisor's existing reasonable qualifications for new franchisees. The surviving spouse, heir, or estate must maintain all standards and obligations of the franchise.

With the prior written consent of the franchisor, a franchisee may sell, transfer, or assign a franchise, all or substantially all of the assets of the franchise business, or an interest in the franchisee. The franchisor's consent may not be withheld unless the purchaser, transferee, or assignee does not meet the qualifications for new or renewing franchisees, or the franchisee and the purchaser, transferee, or assignee fail to comply with other reasonable transfer conditions specified in the franchise agreement.

To invoke the protections of the act, before the sale, transfer, or assignment of a franchise, all or substantially all of the assets of the franchise business, or an interest in the franchisee, the franchisee must notify the franchisor in writing of the franchisee's intent to sell, transfer, or assign.

The franchisor must, within 60 days after receipt of such written notice from a franchisee, or any shorter period required by the franchise agreement, notify the franchisee of the approval or disapproval of the proposed sale, transfer, or assignment. If the proposed sale, transfer, or assignment is disapproved, the franchisor must include in the notice of disapproval a statement specifying the reasons for the disapproval. A proposed sale, transfer, or assignment is deemed approved unless disapproved by the franchisor in the manner provided in proposed s. 686.106(3), F.S., created in the bill.

In a claim against the franchisor for disapproval of a sale, transfer, or assignment, the reasonableness of the franchisor's decision is a question of fact requiring consideration of all existing circumstances. The act does not prohibit entry of a summary judgment when the reasonableness of the disapproval of a sale, transfer, or assignment can be decided as a matter of law.

In addition, the act does not prohibit a franchisor from exercising the contractual right of first refusal to purchase a franchise, all or substantially all of the assets of a franchise business, or an interest in a franchisee after receipt of a bona fide offer from a proposed seller to purchase the franchise, assets, or interest. A franchisor exercising the contractual right of first refusal must offer the seller payment at least equal to the value offered in the bona fide offer.

**Section 7** of the bill creates s. 686.107, F.S., concerning the repurchase of inventory upon termination, nonrenewal, or expiration of a franchise agreement.

The bill requires that a franchisee must have an opportunity to monetize any equity that the franchisee may have developed in the franchise business before the termination, nonrenewal, or expiration of the franchise agreement. The bill provides that equity in the franchisor's intellectual property is not transferred to the franchisee. Therefore, upon termination, nonrenewal, or expiration of a franchise agreement, a franchisor must, if the franchisee requests it, repurchase at fair market value the inventory, supplies, goods, fixtures, equipment, and furnishings of the franchise business. The franchisor must also either purchase the goodwill of the franchise business, or waive all noncompete obligations of the franchisee so that the franchisee may continue in business at its option.

This section of the act does not apply if:

- The franchisee declines a bona fide offer of renewal from the franchisor which is consistent with proposed s. 686.105, F.S., as created by this bill, and the franchise agreement between the franchisor and franchisee.
- The franchisor and franchisee agree in writing within 30 days of the termination, nonrenewal, or expiration of the franchise to terminate or not renew the franchise or to allow the franchise to expire.

This section of the bill does not apply to inventory, supplies, goods, fixtures, equipment, or furnishings sold by the franchisee between the date of the notice of termination, nonrenewal, or expiration and the date the franchisee ceases to operate the franchise business pursuant to a termination, nonrenewal, or expiration.

If a franchisor fails or refuses to repurchase any inventory, supplies, goods, fixtures, equipment, goodwill, or furnishings required to be repurchased within 60 days after the termination, nonrenewal, or expiration of a franchise, the franchisor is civilly liable for the entire value of those items, in addition to the franchisee's reasonable attorney fees, court costs, and interest on the value of those items computed at the legal interest rate<sup>27</sup> from the 61st day after termination.

**Section 8** of the bill creates s. 686.108, F.S., concerning the rights and prohibitions that govern the relations between a franchisor or subfranchisor and its franchisee, to require that the parties must deal with each other in good faith and in a commercially reasonable manner.

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<sup>27</sup> See s. 687.01, F.S.

A person may not, during the selling or establishing of a franchise, intentionally misrepresent or fail to disclose:

- The prospects or chances for success of the proposed or existing franchise;
- The known required total investment for such franchise; or
- Any effort to sell or establish more franchises than is reasonable to expect the market or market area for the particular franchise to sustain.

The act prohibits, as an unfair and deceptive act or practice, or an unfair method of competition, in violation of the act, a franchisor or its representative from directly or indirectly:

- Terminating or failing to renew a franchise agreement in violation of the act.
- Allowing a franchise agreement to expire without complying with the act.
- Failing to repurchase inventory, supplies, goods, fixtures, equipment, goodwill, and furnishings in violation of the requirements in the act for repurchase of inventory.
- Preventing a sale, transfer, or assignment of a franchise in violation of the requirements regarding sales, transfers, and assignments.
- Violating the Florida Deceptive and Unfair Trade Practices Act<sup>28</sup> in connection with its business as a franchisor, or an officer, agent, or other representative thereof.
- Resorting to or using false or misleading advertising in connection with its business as a franchisor, or an officer, agent, or other representative thereof.
- Imposing, directly or indirectly, an unreasonable restriction on a franchisee relative to transfer, renewal, termination, location, or site control.
- Without prior written disclosure to a franchisee, obtaining vendor rebates, kickbacks, or other similar payments from another person with whom the franchisee does business or employs on account of or in relation to the transactions between the franchisee, the franchisor, and the other person,
- Requiring a franchisee to assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed under the act, including, but not limited to, through the use of a disclaimer or checklist designed to avoid a protection under the act.
- Requiring a franchisee to assent to the use of a choice of law provision by selecting a different state's law to govern the relationship of the parties.
- Restricting or inhibiting, directly or indirectly, the right of a franchisee to join a franchisee association or the free association for any lawful purpose among franchisees.
- Imposing upon a franchisee, by contract or rule, written or oral, any unreasonable standard of conduct.
- Requiring a franchisee to waive its rights to a jury trial or waive any procedure or remedy otherwise available in this state, although binding arbitration is enforceable if it complies with the act.

A person who executes or carries out a scheme, plan, or organization that violates any provision of proposed s. 686.111, F.S., created by the bill, if knowledge or intent is proved, commits a misdemeanor of the second degree.

A person who proves in court that a violation of this section has occurred is entitled to the remedies set forth in proposed s. 686.112, F.S., created in this bill (*see Section 12* below).

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<sup>28</sup> See ss. 501.201-.213, F.S.

The Department of Legal Affairs, by itself or jointly with the Department of Agriculture and Consumer Services, may sue on behalf of the people of this state for injunctive relief against any franchisor plan or activity that is in violation of the act.

**Section 9** of the bill creates s. 686.109, F.S., and provides that a franchise agreement or other contract, any part thereof, or any practice under such contract, that violates any provision of the act is deemed against public policy and is void and unenforceable. The bill provides that an aggrieved party may choose to seek to void only the unenforceable portion of a franchise agreement and continue to enforce the remainder of the agreement.

**Section 10** of the bill creates s. 686.110, F.S., to provide that provisions in a franchise restricting the venue to a forum outside of Florida or selecting the law of any other state or jurisdiction other than Florida, are void with respect to any claim arising under or relating to a franchise agreement involving a franchisee that was, at the time of signing, a resident of this state or a business entity established in this state or a franchise business either operating or planning to be operated in Florida.

The bill also provides the act does not apply to a franchise agreement between a Florida franchisor and a franchisee that was not, at the time of signing, a resident of Florida, or a business entity established in Florida, or involving a franchise operating or to be operated in Florida, even if the agreement says Florida law applies.

**Section 11** of the bill creates s. 686.111, F.S., and provides that the act does not limit the right of a franchisor and franchisee to agree, before or after a dispute arises, to binding arbitration to settle a claim under the act if the standards applied and the remedies available are not less than the requirements specified in the act, and each arbitrator an impartial person or is chosen from a list of impartial arbitrators provided by the American Arbitration Association.

**Section 12** of the bill creates s. 686.112, F.S., and provides that if a franchisor terminates, fails to renew, or allows a franchise to expire in violation of the act, the franchisor must pay the franchisee the fair market value of the franchise business and franchise assets, in addition to any other damage caused by the violation. Any person aggrieved or injured in his or her business or property by a violation of the act may bring an action in state or federal court in Florida, to recover the damages sustained and the costs of such action, including reasonable attorney fees.

In addition to any other remedy or relief to which a person is entitled, any person aggrieved by a violation of the act also may bring an action to obtain a declaratory judgment stating that an action or a practice violates the act, and injunctive relief enjoining a franchisor that has violated, is violating, or is otherwise likely to violate the act from committing the violation.

In an action for monetary damages, upon a finding that the franchisor acted maliciously, the bill authorizes a judge or jury to award punitive damages as authorized by Florida law.

The Department of Legal Affairs or the state attorney may bring an action for injunctive relief or other appropriate civil relief for a violation of the act if the violation occurs in the judicial circuit of the department or the state attorney, respectively. The remedies are in addition to any other

remedies provided by law or in equity, including, but not limited to, the Florida Deceptive and Unfair Trade Practices Act.<sup>29</sup>

**Section 13** of the bill creates s. 686.113, F.S., and provides that any person or franchisor who engages directly or indirectly in an agreement or contract in Florida concerning a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operated in Florida, is subject to the act and to the jurisdiction of Florida courts, in accordance with Florida law.

The act expressly applies to:

- Any written or oral agreement between a franchisor and a franchisee, including, but not limited to, a franchise offering; a franchise agreement; a sale of goods, services, and advertising; a lease or mortgage of real or personal property; a promise to pay; a security interest; a pledge; an insurance contract; an advertising contract; a construction or installation contract; a servicing contract; and any other agreement in which the franchisor has a direct or indirect interest;
- Any franchise entered into, renewed, amended, or revised after the effective date of the act;
- Any existing franchise of an indefinite duration which may be terminated by the franchisee or franchisor without cause; and
- Any existing franchise entered into before the effective date of the act, only to the extent that the act does not significantly impair the existing contract rights between the parties.

The act is supplemental to, and does not preempt, local ordinances dealing with prohibited or unlawful conduct in the manufacturing, distribution, wholesaling, advertising, or sale of goods if such ordinances are not inconsistent with the act.

The bill provides that the act supersedes s. 817.416, F.S., with respect to any franchisee that signs a franchise agreement on or after the effective date of the act. Under the bill, s. 817.416, F.S., continues to govern the claims of all franchisees that signed franchise agreements or were victims of fraud perpetrated before the effective date of the act, as well as distributors and any other entities, past, present, or future, which would be covered by s. 817.416, F.S., but not by the act.

**Section 14** of the bill amends s. 817.416, F.S., to provide that s. 817.416, F.S., does not apply to a franchise entered into, renewed, amended, or revised on or after the effective date of the act and that a franchise entered into, renewed, amended, or revised on or after the effective date of the act is subject to the requirements of the act.

**Section 15** of the bill directs the Division of Law Revision and Information to replace the phrase “the effective date of the act” wherever it occurs in the act, with the date that the act becomes a law.

**Section 16** of the bill provides that the bill is effective upon becoming law.

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<sup>29</sup> See ss. 501.201-.213, F.S.



**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

CS/SB 750 creates provisions affecting persons who engage, directly or indirectly, in an agreement or contract in Florida in connection with a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operating in this state. Such persons are made subject to the act and to jurisdiction of Florida courts for violations of the act. With respect to *existing* franchise agreements or contracts, certain provisions of the bill may implicate constitutional concerns relating to impairment of contract.<sup>30</sup>

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,<sup>31</sup> the Florida Supreme court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated a statute, as an unconstitutional impairment of contract, which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court set forth several factors to be considered in balancing whether a state law has in fact operated as a substantial impairment of a contractual relationship, stating “[t]he severity of the impairment measures the height of the hurdle the state legislation must clear.”<sup>32</sup>

The court stated that if there is minimal alteration of contractual obligations, the inquiry may end at its first stage. Severe impairment pushes the inquiry into a careful examination of the nature and purpose of the state legislation. The factors to be considered are whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary, or whether it is severe, permanent, immediate, and retroactive.<sup>33</sup>

<sup>30</sup> Article I, s. 10, U.S. Constitution and Art. I, s. 10, Fla. Const.

<sup>31</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

<sup>32</sup> *Pomponio*, 378 So. 2d at 779.

<sup>33</sup> *Id.*

In *United States Fidelity & Guaranty Co. v. Department of Insurance*,<sup>34</sup> the Florida Supreme Court followed *Pomponio* and said that the method requires a balancing of a person's interest to not have his or her contracts impaired, with the state's interest in exercising its legitimate police power. The court adopted the method used by the U.S. Supreme Court, in which the threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship."<sup>35</sup> The severity of the impairment increases the level of scrutiny.

Relevant to the extent of the impairment is whether the industry the complaining party had entered had been regulated in the past because if the party was already subject to regulation when the contract was entered, then it is understood that it would be subject to further legislation upon the same topic.<sup>36</sup> If the state regulation constitutes a substantial impairment, the state must have a significant and legitimate public purpose<sup>37</sup> and any adjustment of the rights and responsibilities of the contracting parties must be appropriate to the public purpose justifying the legislation.<sup>38</sup>

Furthermore, although retroactive application of a law may be constitutional in certain situations,<sup>39</sup> in 2011, the Florida Supreme Court unanimously held, in *Cohn v. The Grand Condominium Association, Inc.*,<sup>40</sup> that by changing the distribution of voting power between residential owners and other owners in a mixed-use condominium (i.e., a provision of an existing contract), the retroactive application of the law at issue in that case altered the rights of the unit owners in contravention of their contractual agreement and, thus, impaired the obligation of contract as applied.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

CS/SB 750 may impact the financial interests of persons who engage, directly or indirectly, in an agreement or contract in Florida in connection with a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operating in this state.

### **C. Government Sector Impact:**

The bill amends s. 817.416, F.S., to state that the provision does not apply to a franchise entered into, renewed, amended, or revised on or after the effective date of the act.

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<sup>34</sup> *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984).

<sup>35</sup> *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).

<sup>36</sup> *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).

<sup>37</sup> *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).

<sup>38</sup> *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1361.

<sup>39</sup> *Century Village, Inc. v. Wellington*, 361 So. 2d 128 (Fla. 1978).

<sup>40</sup> *Cohn*, 62 So. 3d. 1120, 1122 (Fla. 2011).

Notwithstanding the removal of certain franchises from the provisions of s. 817.416, F.S., the authority of the Department of Legal Affairs, or the Department of Legal Affairs and the Department of Agriculture and Consumer Services jointly, to sue for injunctive relief against franchise or distributorship plans or activities that engage in intentional misrepresentations pursuant to s. 817.416(4), F.S., (the intentional misrepresentation remedies) remains effective. There may be additional costs associated with enforcement of the intentional misrepresentation remedies deemed necessary in connection with activities conducted pursuant to the act.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

CS/SB 750 addresses expiration of franchise agreements in Section 5, in proposed s. 686.105(3), F.S., created in the bill, (lines 283-290), and states:

A franchisor may permit the franchise agreement to expire, if the franchisor provides written notice 180 days before the agreement's expiration, the franchisor agrees not to enforce any covenant against the franchisee not to compete with the franchisor or with other franchisees of the franchisor, and the nonrenewal of the franchise is not for the purpose of converting the franchise business to operation by an affiliate, employee, or agent of the franchisor.

The reference to the covenant not to compete does not address execution of a document by a franchisee containing a covenant not to compete. The term "nonrenewal" does not appear to fit within the topic of proposed s. 686.105, F.S., created in the bill. There is no method to document the franchisor's opting not to enforce a covenant not to compete, or that the expiration of a franchise agreement is "not for the purpose of converting" the franchise operations to a third party.

The bill requires that a franchisor notify a franchisee of approval or disapproval of a proposed sale, transfer, or assignment of a franchise within 60 days *after receipt of all of the written notice or* any shorter period required by the franchise agreement" (lines 339-342,; emphasis added). Substituting the phrase "after receipt from the franchisee of the written notice, or" may clarify the intended requirement.

The bill provides that the Department of Legal Affairs or the state attorney may bring an action for injunctive relief or other appropriate civil relief for a violation of the act, if the violation occurs in the judicial circuit of the department or the state attorney. The jurisdiction of the Department of Legal Affairs is not limited by judicial circuit.<sup>41</sup>

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<sup>41</sup> See s. 16.015, F.S.

**VIII. Statutes Affected:**

This bill substantially amends section 817.416 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 686.101, 686.102, 686.103, 686.104, 686.105, 686.106, 686.107, 686.108, 686.109, 686.111, 686.112, and 686.113.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Regulated Industries Committee on April 4, 2017:**

The committee substitute:

- Provides that the bill does not apply to recreational vehicle dealer franchises.
- Revises what constitutes a “franchise fee;” (by removing fees for purchases or rental of fixtures, credit card service charges, and trading stamps).
- Provides a franchisor may not refuse to renew a franchise except for good cause; refusal to renew without good cause is unfair termination of a franchise agreement.
- Provides a franchise agreement is a continuing agreement, even if it is limited to a certain term, unless the franchise is otherwise terminated, or the franchisor:
  - Agrees not to enforce any non-compete covenant by the franchisee; and
  - Provides written notice, at least 180 days before the agreement expires, of the intent not to extend the franchise agreement.
- Deletes:
  - The definition of “goods,” which provides that the term includes any article used or consumed by a franchisee for services directed or approved by a franchisor; however, numerous references to “goods” are retained in the bill.
  - Requirements for a franchisee to provide a right of first refusal on premises occupied by a franchisee or to offer a franchisee a franchise on the same terms.
  - Authorization for a franchisor to notify a franchisee of an immediate termination when an appeal bond is not filed, a final judgment remains unpaid for 30 days, and the business premises are seized or foreclosed on by a creditor.
  - A requirement that if a franchisor determines to sell, transfer, or assign its interest in the marketing premises occupied by a franchisee whose franchise agreement is not renewed, the franchisor must provide the franchisee a right of first refusal of at least 30 days’ duration of a bona fide offer to purchase by a third party, or the franchisor or its assignee must offer the franchisee a franchise on substantially the same terms and conditions offered to other franchisees.
  - Authorization for a franchisee sent a notice of intent of a nonrenewal of a franchise to file a lawsuit or request arbitration to determine if such action is proper.
  - Requirements for the contents and transmittal of notices of termination, nonrenewal, or expiration.
  - A provision that the disapproval of a sale, transfer, or assignment by a franchisor is a question of fact and that the act does not prohibit entry of a summary

judgment when reasonableness of the disapproval can be decided as a matter of law.

- A provision that franchisors are not required to purchase any personalized items, inventory, supplies, goods, fixtures, equipment, or furnishings not reasonably required to conduct the franchise business, or items whose title and possession are not able to be lawfully granted by the franchisee upon the franchisor's payment when the franchise ceases to operate.
- Authorization that upon the termination, nonrenewal, or expiration of a franchise, a franchisor may offset money owed to the franchisee, with any amount owed by the franchisee to the franchisor.
- A provision that proposed s. 686.107, F.S., created in the bill, does not apply to a termination, nonrenewal, or expiration of a franchise agreement if the franchisor does not prevent the franchisee from retaining control and continuing to operate the franchise.
- Requirements that a franchisor repurchase inventory on the death or incapacity of a franchisee.
- A requirement that a franchisor or subfranchisor not engage in any action that is arbitrary, capricious, in bad faith, or unconscionable and causes damage to a franchisee or to the public.
- Requirements for the full indemnification of a franchisee by a franchisor arising from claims involving parts or accessories.
- A prohibition against a franchisor engaging in arbitrary or bad faith that causes damage to a franchisee or to the public; provides parties must deal with each other in a commercially reasonable manner.
- As unfair and deceptive practices by a franchisor that:
  - Coerce or compel a franchisee to take certain actions;
  - Willfully discriminate in pricing or terms of sale that provides a franchisee an advantage over other franchisees; or
  - Compete with a franchisee, or allow another franchisee to operate, in the franchisee's exclusive territory.
- The specific items a franchisee must include when notifying a franchisor of a proposed sale or transfer of a franchise business.
- Provides an alternate to mandatory purchase by a franchisor of the goodwill in a franchisee's business when a franchise agreement is not renewed or expires; authorizes the franchisor to allow the franchisee to continue in business despite any contractual obligations not to compete.
- Provides certain remedies when a franchisee proves a franchisor has engaged in unfair and deceptive practices prescribed in the act rather than a judgment for all monies invested by a franchisee.
- Provides the act does not apply to a franchise agreement between a Florida franchisor and a franchisee that was a nonresident of Florida when the franchise agreement was signed, or a business entity established in Florida or involving a franchise either operating or to be operated in Florida, even if the agreement says Florida law applies.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Regulated Industries  
**ITEM:** SB 750  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, April 4, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** 110 Senate Office Building

FINAL VOTE			4/04/2017 Amendment 826202		4/04/2017 Vote at time certain of 5:25 PM			
		SENATORS	Latvala		Young			
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Benacquisto						
X		Bracy						
	X	Brandes						
		Braynon						
X		Gibson						
X		Perry						
X		Steube						
X		Thurston						
X		Young						
		Hukill, VICE CHAIR						
	X	Hutson, CHAIR						
7	2		RCS	-	FAV	-		
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting



826202

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/05/2017	.	
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The Committee on Regulated Industries (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 686.101, Florida Statutes, is created to  
read:

686.101 Short title.—Sections 686.101-686.113 may be cited  
as the "Protect Florida Small Business Act."

Section 2. Section 686.102, Florida Statutes, is created to  
read:





826202

686.102 Legislative findings and intent; construction.—

(1) The Legislature finds that the welfare of franchisees, including the success and failure of their franchise businesses, greatly affects the general economy of this state, the public interest, and the public welfare. The intent of the Legislature is to promote fair business relations between franchisees and franchisors and to protect franchisees against unfair treatment by franchisors. Therefore, it is necessary to regulate the conduct of franchisors and their representatives in order to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other abuses upon franchisees in this state.

(2) In order to promote the intention and policies in this section, the provisions of this act shall be liberally construed.

Section 3. Section 686.103, Florida Statutes, is created to read:

686.103 Definitions.—As used in this act, the term:

(1) "Affiliate" means a person controlling, controlled by, or under common control with another person or, in the case of a business entity, such entity's officer, director, or other person in control of the activities of such entity.

(2) "Area franchise" means a contract or agreement, expressed or implied, written or oral, regardless of whether the contract or agreement is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, between a franchisor and another person through which that person is granted the right, for consideration in whole or in part:



826202

40       (a) To sell or negotiate the sale of a franchise in the  
41 name or on behalf of the franchisor; or

42       (b) To become an area developer and develop a franchise for  
43 the benefit of that person or that person's affiliates.

44       (3) "Area franchisee" means the owner of an area franchise.

45       (4) (a) "Franchise" or "franchise agreement" means a  
46 contract or agreement, expressed or implied, written or oral,  
47 regardless of whether the contract or agreement is designated as  
48 a franchise, permit, license, resolution, contract, certificate,  
49 agreement, or otherwise, for a definite or indefinite time,  
50 between two or more persons by which:

51       1. A franchisee is granted the right to engage in the  
52 business of offering, selling, or distributing goods or services  
53 under a marketing plan or system prescribed in substantial part  
54 by a franchisor;

55       2. The operation of the franchise business pursuant to that  
56 marketing plan or system is substantially associated with the  
57 franchisor's trademark, service mark, trade name, logotype,  
58 advertising, or other commercial symbol designating the  
59 franchisor or its affiliate; and

60       3. The franchisee is required to pay, directly or  
61 indirectly, a franchise fee.

62       (b) The term "franchise" or "franchise agreement" includes  
63 an area franchise.

64       (c) The term "franchise" or "franchise agreement" does not  
65 include any of the following:

66       1. A franchise governed by the Agricultural Equipment  
67 Manufacturers and Dealers Act.

68       2. Any activity governed by ss. 686.501-686.506.



826202

3. A franchise governed by the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act.

4. A motor vehicle franchise or agreement governed by ss. 320.3201-320.3211 or ss. 320.60-320.70.

5. A business relationship between a beer distributor and a manufacturer governed by s. 563.022.

6. A professional sports franchise as described in s. 288.11625(2)(c).

(5) "Franchise business" means a business unit that is owned or operated by a franchisee and that is subject to a marketing plan or system prescribed by the franchise.

(6) "Franchise fee" means a fee or charge greater than \$100 annually which a franchisee is required to pay or agrees to pay, directly or indirectly, to the franchisor for the right to enter into or continue a franchise, including, but not limited to, a payment for goods or services. However, a fee or charge that a franchisee pays or agrees to pay the franchisor for goods at a bona fide wholesale price if no obligation is imposed upon the franchisee to purchase or pay for a quantity of goods in excess of that which a reasonable person normally would purchase by way of a starting inventory or supply or to maintain an ongoing inventory or supply is not considered a franchise fee.

(7) "Franchisee" means a person to whom a franchise is offered or granted.

(8) "Franchisor" means a person who grants a franchise to a franchisee.

(9) "Fraud" means and includes actual fraud or constructive fraud as normally defined, in addition to the following:



826202

(a) A misrepresentation in any manner, whether intentionally false or arising from negligence, of a material fact.

(b) A promise or representation not made honestly and in good faith.

(c) An intentional failure to disclose a material fact.

(d) Any artifice employed to deceive another.

(10) "Person" means a natural person, corporation, limited liability company, association, partnership, trust, or other business entity and, in the case of a business entity, includes any other affiliate of such entity.

(11) "Sale" means and includes the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, or mortgage in any manner or form, whether by transfer in trust or otherwise, of any goods or interest therein, or of any franchise related thereto, for a consideration, and any option, subscription or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether in written or oral form, for a consideration.

Section 4. Section 686.104, Florida Statutes, is created to read:

686.104 Termination or nonrenewal.—

(1) Except as otherwise provided in this act, a franchisor may not terminate or refuse to renew a franchise except for good cause. The termination or nonrenewal of a franchise without good cause constitutes an unfair termination. Except as provided in subsection (2), good cause is limited to the failure of the franchisee to substantially comply with the reasonable and material requirements imposed upon the franchisee by the



826202

franchise agreement after being given notice at least 90 days in advance of the termination and a reasonable opportunity, which may not be less than 60 days after the date of the notice of noncompliance, to cure the failure. If the franchisee cures the failure within the time given to cure, the termination notice is void.

(2) A franchisor may give to a franchisee an immediate notice of termination without an opportunity to cure if, during the period in which the franchise is in effect, any one of the following events relevant to the franchise occurs:

(a) The franchisee has been judicially determined to be insolvent, has had all or a substantial part of its assets assigned to or for the benefit of any creditor, or has admitted its inability to pay its debts as they come due.

(b) The franchisee abandons, by failing to operate, the franchise business for 10 consecutive days during which, under the terms of the franchise, the franchisee is required to operate the franchise business unless such failure to operate is due to an act of God; a work stoppage; a strike or labor difficulty; a fire, flood, hurricane, or sinkhole; or other causes beyond the franchisee's control.

(c) The franchisor and franchisee, within 30 days after termination or nonrenewal, agree in writing to terminate the franchise.

(d) The franchisee fails, for a period of 10 days after a notice of noncompliance, to comply with any federal, state, or local law or regulation, including, but not limited to, any health, safety, building, and labor law or regulation applicable to the operation of the franchise.



826202

(e) A levy of execution has been made on the license granted by the franchise or on a property used in the franchise business and is not discharged within 5 days after such levy.

(f) The franchisee is convicted of a felony that significantly, directly, and adversely affects the operation of the franchise business.

(g) The franchisor makes a reasonable determination that continued operation of the franchise business by the franchisee will result in imminent and substantial danger to public health or safety.

Section 5. Section 686.105, Florida Statutes, is created to read:

686.105 Expiration.—

(1) A franchise agreement, regardless of its stated term of years, is deemed to be continuing unless the franchisor has complied with subsections (2) and (3).

(2) A franchisor must provide written notice to the franchisee of the franchisor's intent not to extend the agreement beyond its expiration date at least 180 days before the expiration date unless:

(a) Termination of the franchise agreement is authorized under s. 686.104;

(b) The franchisor and franchisee agree, before the agreement's expiration, in writing not to extend the franchise;  
or

(c) The franchisor completely withdraws from directly or indirectly distributing its products or services in the geographic market then being served by the franchisee.

(3) The franchisor may permit the franchise agreement to



826202

expire if the franchisor provides written notice 180 days before  
the agreement's expiration, the franchisor agrees not to enforce  
any covenant against the franchisee not to compete with the  
franchisor or with other franchisees of the franchisor, and the  
nonrenewal of the franchise is not for the purpose of converting  
the franchise business to operation by an affiliate, employee,  
or agent of the franchisor.

(4) As a condition of an extension of the franchise  
agreement, the franchisor may require that the franchisee meet  
the reasonable qualifications for new franchisees existing at  
the time of extension and that the franchisee execute a new  
franchise agreement incorporating terms and fees existing for  
new franchises at the time of extension.

Section 6. Section 686.106, Florida Statutes, is created to  
read:

686.106 Sales, transfers, and assignments.—

(1) A franchisor may not deny the surviving spouse, heir,  
or estate of a deceased franchisee or of the person controlling  
a majority interest in the franchisee the opportunity to  
participate in the ownership of the franchise or franchise  
business under a valid franchise agreement for at least 180 days  
after the death of the franchisee or person controlling a  
majority interest in the franchisee. During that time, the  
surviving spouse, heir, or estate of the deceased must either  
meet all of the existing reasonable qualifications for a  
purchaser of a franchise or must sell, transfer, or assign the  
franchise to a person who meets the franchisor's existing  
reasonable qualifications for new franchisees. The rights  
granted to the surviving spouse, heir, or estate under this



826202

section are granted subject to the surviving spouse, heir, or  
estate of the deceased maintaining all standards and obligations  
of the franchise.

(2)(a) A franchisee may sell, transfer, or assign a  
franchise, all or substantially all of the assets of the  
franchise business, or an interest in the franchisee with the  
prior written consent of the franchisor. The franchisor's  
consent may not be withheld unless the purchaser, transferee, or  
assignee does not meet the qualifications for new or renewing  
franchisees described in paragraph (b) or the franchisee and the  
purchaser, transferee, or assignee fail to comply with other  
reasonable transfer conditions specified in the franchise  
agreement.

(b) A franchisor may not prevent a franchisee from selling,  
transferring, or assigning a franchise, all or substantially all  
of the assets of the franchise business, or an interest in the  
franchisee to another person if the other person meets the  
franchisor's reasonable qualifications for the approval of new  
or renewing franchises in effect at the time the franchisor  
receives notice of the proposed sale, transfer, or assignment.

(3)(a) To invoke the protections under this section, a  
franchisee must, before the sale, transfer, or assignment of a  
franchise, all or substantially all of the assets of the  
franchise business, or an interest in the franchisee, notify the  
franchisor in writing of the franchisee's intent to sell,  
transfer, or assign.

(b) The franchisor shall, within 60 days after receipt of  
all of the written notice or any shorter period required by the  
franchise agreement, notify the franchisee of the approval or





826202

disapproval of the proposed sale, transfer, or assignment. If the proposed sale, transfer, or assignment is disapproved, the franchisor must include in the notice of disapproval a statement specifying the reasons for the disapproval. A proposed sale, transfer, or assignment is deemed approved unless disapproved by the franchisor in the manner provided in this paragraph.

(4) This section does not prohibit a franchisor from exercising the contractual right of first refusal to purchase a franchise, all or substantially all of the assets of a franchise business, or an interest in a franchisee after receipt of a bona fide offer from a proposed seller to purchase the franchise, assets, or interest. A franchisor exercising the contractual right of first refusal shall offer the seller payment at least equal to the value offered in the bona fide offer.

Section 7. Section 686.107, Florida Statutes, is created to read:

686.107 Repurchase of inventory upon termination, nonrenewal, or expiration of a franchise agreement.—

(1) (a) A franchisee must have the opportunity to monetize any equity that the franchisee may have developed in the franchise business before the termination, nonrenewal, or expiration of the franchise agreement. Equity in the franchisor's intellectual property is not transferred to the franchisee, however. Therefore, upon termination, nonrenewal, or expiration of a franchise agreement, a franchisor must, if the franchisee requests it, repurchase at fair market value the inventory, supplies, goods, fixtures, equipment, and furnishings of the franchise business. The franchisor must also either purchase the goodwill of the franchise business or waive any and



826202

all noncompete obligations of the franchisee so that the franchisee may, at its option, continue in business.

(b) This section does not apply if the franchisee declines a bona fide offer of renewal from the franchisor which is consistent with s. 686.105 and the franchise agreement between the franchisor and franchisee.

(c) This section does not apply if the franchisor and franchisee agree in writing within 30 days of the termination, nonrenewal, or expiration of the franchise to terminate or not renew the franchise, or to allow the franchise to expire.

(d) This section does not apply to inventory, supplies, goods, fixtures, equipment, or furnishings sold by the franchisee between the date of the notice of termination, nonrenewal, or expiration and the date the franchisee ceases to operate the franchise business pursuant to a termination, nonrenewal, or expiration.

(2) If a franchisor fails or refuses to repurchase any inventory, supplies, goods, fixtures, equipment, good will, or furnishings required to be repurchased under subsection (1) within 60 days after the termination, nonrenewal, or expiration of a franchise, the franchisor is civilly liable for the entire value of the inventory, supplies, goods, fixtures, equipment, good will, and furnishings required to be repurchased under subsection (1), plus the franchisee's reasonable attorney fees, court costs, and interest on the inventory, supplies, goods, fixtures, equipment, good will, and furnishings computed at the legal interest rate provided in s. 687.01 from the 61st day after termination.

Section 8. Section 686.108, Florida Statutes, is created to



826202

read:

686.108 Rights and prohibitions.—The following rights and prohibitions govern the relations between a franchisor or subfranchisor and its franchisee:

(1) The parties shall deal with each other in good faith and in a commercially reasonable manner.

(2) A person may not, during the selling or establishing of a franchise, intentionally misrepresent or fail to disclose:

(a) The prospects or chances for success of the proposed or existing franchise;

(b) The known required total investment for such franchise;  
or

(c) Any effort to sell or establish more franchises than is reasonable to expect the market or market area for the particular franchise to sustain.

(3) It is prohibited and deemed an unfair and deceptive act or practice, or an unfair method of competition, and a violation of this section for a franchisor or subfranchisor, or an officer, agent, employee, or other representative thereof to directly or indirectly:

(a) Terminate or fail to renew a franchise agreement in violation of this act;

(b) Allow a franchise agreement to expire without complying with this act;

(c) Fail to repurchase inventory, supplies, goods, fixtures, equipment, good will, and furnishings in violation of s. 686.107;

(d) Prevent a sale, transfer, or assignment of a franchise in violation of s. 686.106;



826202

(e) Violate the Florida Deceptive and Unfair Trade Practices Act in connection with its business as a franchisor, or an officer, agent, or other representative thereof;

(f) Resort to or use false or misleading advertising in connection with its business as a franchisor, or an officer, agent, or other representative thereof;

(g) Without prior written disclosure to a franchisee, obtain vendor rebates, kickbacks, or other similar payments from another person with whom the franchisee does business or employs on account of or in relation to the transactions between the franchisee, the franchisor, and the other person;

(h) Require a franchisee to assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed under this act, including, but not limited to, through the use of a disclaimer or checklist designed to avoid a protection under this act;

(i) Require a franchisee to assent to the use of a choice of law provision by selecting a different state's law to govern the relationship of the parties;

(j) Restrict or inhibit, directly or indirectly, the right of a franchisee to join a franchisee association or the free association for any lawful purpose among franchisees;

(k) Impose upon a franchisee, by contract or rule, written or oral, any unreasonable standard of conduct; or

(l) Require a franchisee to waive its rights to a jury trial or waive any procedure or remedy otherwise available in this state, however, a binding arbitration clause is enforceable if it complies with s. 686.111.

(4) A person who executes or carries out a scheme, plan, or



826202

organization that violates any provision of this section, if  
knowledge or intent is proved, commits a misdemeanor of the  
second degree, punishable as provided in ss. 775.082 and  
775.083.

(5) A person who shows in a civil court of law a violation  
of this section is entitled to the remedies in s. 686.112.

(6) The Department of Legal Affairs, by itself or jointly  
with the Department of Agriculture and Consumer Services, may  
sue on behalf of the people of this state for injunctive relief  
against any franchisor plan or activity that is in violation of  
this act.

Section 9. Section 686.109, Florida Statutes, is created to  
read:

686.109 Unenforceable franchise agreement or other contract  
or part thereof.—A franchise agreement or other contract, a part  
thereof, or practice thereunder which is in violation of any  
provision of this act is deemed against public policy and is  
void and unenforceable. An aggrieved party at its option may  
choose to seek to void only the portion of the agreement that is  
unenforceable and continue to enforce the remainder of the  
agreement.

Section 10. Section 686.110, Florida Statutes, is created  
to read:

686.110 Venue; choice of law.—

(1) A provision in a franchise agreement restricting the  
venue to a forum outside of this state or selecting the law of  
any other state or jurisdiction other than Florida is void with  
respect to any claim arising under or relating to a franchise  
agreement involving a franchisee that was, at the time of



826202

signing, a resident of this state or a business entity  
established in this state or involving a franchise business  
either operating or planning to be operated in this state.

(2) An agreement between a franchisor based in this state  
and a franchisee that was not, at the time of signing, a  
resident of this state or a business entity established in this  
state or involving a franchise business either operating or  
planning to be operated in this state is not subject to this  
act, regardless of whether the franchise agreement contains a  
choice of law provision selecting this state.

Section 11. Section 686.111, Florida Statutes, is created  
to read:

686.111 Arbitration.—This act does not limit the right of a  
franchisor and franchisee to agree, before or after a dispute  
arises, to binding arbitration to settle a claim under this act  
if:

(1) The standards applied and the remedies available in the  
arbitration are not less than the requirements specified in this  
act; and

(2) Each arbitrator employed is chosen from a list of  
impartial arbitrators provided by the American Arbitration  
Association or is any other impartial person.

Section 12. Section 686.112, Florida Statutes, is created  
to read:

686.112 Remedies.—

(1) If a franchisor terminates, fails to renew, or allows a  
franchise to expire in violation of this act, the franchisee is  
entitled to receive from the franchisor the fair market value of  
the franchise business and franchise assets in addition to any



826202

other damage caused by the violation.

(2) In addition to any relief specified in this act, any person aggrieved or injured in his or her business or property by any violation of this act may bring an action in the appropriate state or federal court of this state and shall recover the damages sustained and the costs of such action, including reasonable attorney fees.

(3) Without regard and in addition to any other remedy or relief to which a person is entitled, any person aggrieved by a violation of this act may bring an action to obtain a declaratory judgment stating that an action or a practice violates these sections and may obtain injunctive relief enjoining a franchisor that has violated, is violating, or is otherwise likely to violate these sections from committing the violation.

(4) In an action for monetary damages, if a judge or jury finds that the franchisor acted maliciously, the judge or jury may award punitive damages as authorized by state law.

(5) The Department of Legal Affairs or the state attorney may bring an action for injunctive relief or other appropriate civil relief for a violation of this act if the violation occurs in the judicial circuit of the department or the state attorney, respectively.

(6) The remedies provided in this section are in addition to any other remedies provided by law or in equity, including, but not limited to, the Florida Deceptive and Unfair Trade Practices Act.

Section 13. Section 686.113, Florida Statutes, is created to read:



826202

686.113 Applicability.—

(1) Any person or franchisor who engages directly or indirectly in an agreement or contract within this state in connection with a franchise, or any franchise whose franchisee is a resident of this state or is domiciled in this state or whose franchise business is, has been, or is intended to be operated in this state, is subject to this act and to the jurisdiction of the courts of this state, in accordance with the laws of this state, for violations of this act.

(2) This act applies to:

(a) Any written or oral agreement between a franchisor and a franchisee, including, but not limited to, a franchise offering; a franchise agreement; a sale of goods, services, and advertising; a lease or mortgage of real or personal property; a promise to pay; a security interest; a pledge; an insurance contract; an advertising contract; a construction or installation contract; a servicing contract; and any other agreement in which the franchisor has a direct or indirect interest;

(b) Any franchise entered into, renewed, amended, or revised after the effective date of this act;

(c) Any existing franchise of an indefinite duration which may be terminated by the franchisee or franchisor without cause; and

(d) Any existing franchise entered into before the effective date of this act, only to the extent that this act does not significantly impair the existing contract rights between the parties.

(3) This act is supplemental to, and does not preempt,





826202

local ordinances dealing with prohibited or unlawful conduct in the manufacturing, distribution, wholesaling, advertising, or sale of goods if such ordinances are not inconsistent with this act.

(4) This act supersedes s. 817.416 with respect to any franchisee that signs a franchise agreement on or after the effective date of this act. Section 817.416 continues to govern the claims of all franchisees that signed franchise agreements or were victims of fraud perpetrated before the effective date of this act, as well as distributors and any other entities, past, present, or future, which would be covered by s. 817.416, but not by this act.

Section 14. Subsection (5) is added to section 817.416, Florida Statutes, to read:

817.416 Franchises and distributorships;  
misrepresentations.—

(5) APPLICABILITY.—This section does not apply to a franchise entered into, renewed, amended, or revised on or after the effective date of this act. A franchise entered into, renewed, amended, or revised on or after the effective date of this act is subject to ss. 686.101-686.113.

Section 15. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 16. This act shall take effect upon becoming a law.

===== T I T L E   A M E N D M E N T =====  
And the title is amended as follows:



826202

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to franchises; creating s. 686.101,  
F.S.; providing a short title; creating s. 686.102,  
F.S.; providing legislative findings and intent;  
providing construction; creating s. 686.103, F.S.;  
providing definitions; creating s. 686.104, F.S.;  
prohibiting a franchisor from terminating or not  
renewing a franchise except under certain  
circumstances; providing limitations on what  
constitutes good cause; providing that immediate  
notice of termination of a franchise for specified  
reasons under certain circumstances is reasonable;  
creating s. 686.105, F.S.; providing that a franchise  
is deemed to be continuing under certain  
circumstances; prohibiting a franchisor from allowing  
a franchise to expire unless specified criteria have  
been met; authorizing a franchisor to require a  
franchisee to meet specified requirements; requiring a  
franchise and other related agreements to continue in  
effect under certain circumstances; creating s.  
686.106, F.S.; prohibiting a franchisor from denying  
certain persons the opportunity to participate in the  
ownership of a franchise for a specified period after  
the death of the franchisee or the person controlling  
a majority interest; requiring specified persons to  
meet certain requirements or to sell, transfer, or  
assign the franchise after the death of the franchisee



826202

or the person controlling a majority interest;  
authorizing a franchisee to sell, transfer, or assign  
a franchise, specified assets, or an interest in the  
franchisee under certain circumstances; prohibiting a  
franchisor from preventing a franchisee from selling  
or transferring a franchise, assets of the franchise  
business, or an interest in the franchisee under  
certain circumstances; requiring the franchisor to  
make available and to apply specified requirements for  
the approval of new or renewing franchises under  
certain circumstances; requiring a franchisee to  
notify a franchisor of certain intent; providing  
notice requirements; providing application  
requirements for the proposed purchaser, transferee,  
or assignee of a franchise, certain assets, or an  
interest in the franchisee under certain  
circumstances; requiring a franchisor to notify a  
franchisee of the approval status of a proposed sale,  
assignment, or transfer within a specified timeframe;  
providing notice requirements; providing that certain  
provisions do not prohibit a franchisor from  
exercising a contractual right of first refusal under  
certain circumstances; creating s. 686.107, F.S.;  
providing that a franchisee must have the opportunity  
to monetize certain equity from the franchise business  
under certain circumstances; requiring the repurchase  
by a franchisor of certain inventory, supplies, goods,  
fixtures, equipment, good will, and furnishings upon  
termination, nonrenewal, or expiration of a franchise



826202

subject to certain requirements; providing applicability; providing that a franchisor is civilly liable for failing or refusing to repurchase certain inventory, supplies, goods, fixtures, equipment, good will, and furnishings under specified requirements upon termination, nonrenewal, or expiration of a franchise; creating s. 686.108, F.S.; requiring a franchisor or subfranchisor and a franchisee to deal with each other in good faith; prohibiting a person from intentionally misrepresenting or failing to disclose specified information; providing that certain actions are deemed unfair and deceptive; providing that it is a violation of certain provisions for a franchisor and subfranchisor to restrict or inhibit specified rights of franchisees; providing that certain violations constitute a misdemeanor of the second degree; providing penalties; providing that a person may be awarded certain damages, attorney fees, and other costs under specified circumstances; authorizing the Department of Legal Affairs by itself or jointly with the Department of Agriculture and Consumer Services to sue a franchisor on behalf of certain persons for specified violations; creating s. 686.109, F.S.; providing that a contract or franchise agreement is void and unenforceable under certain circumstances; creating s. 686.110, F.S.; providing that provisions in a franchise agreement which restrict venue or choice of law are void under certain circumstances; creating s. 686.111, F.S.; providing



826202

that the rights of a franchisor and franchisee to agree to binding arbitration are not limited under certain circumstances; creating s. 686.112, F.S.; providing remedies for a franchisee or an aggrieved or injured person under certain circumstances; authorizing punitive damages under certain circumstances; authorizing the Department of Legal Affairs or the state attorney to bring an action for injunctive relief or other civil relief under certain circumstances; clarifying that specified remedies are in addition to existing remedies; creating s. 686.113 F.S.; providing applicability; amending s. 817.416, F.S.; providing applicability; providing a directive to the Division of Law Revision and Information; providing an effective date.

By Senator Latvala

16-00129B-17

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A bill to be entitled

An act relating to franchises; creating s. 686.101, F.S.; providing a short title; creating s. 686.102, F.S.; providing legislative findings and intent; providing construction; creating s. 686.103, F.S.; defining terms; creating s. 686.104, F.S.; prohibiting a franchisor from terminating a franchise under certain circumstances; providing limitations on what constitutes good cause; providing that immediate notice of termination of a franchise for specified reasons under certain circumstances is reasonable; creating s. 686.105, F.S.; providing that a franchise is deemed to be continuing under certain circumstances; prohibiting a franchisor from refusing to renew a franchise unless specified criteria have been met; authorizing a franchisor to require a franchisee to meet specified requirements; authorizing a franchisee to file an action or to request arbitration under certain circumstances; requiring a franchise and other related agreements to continue in effect under certain circumstances; creating s. 686.106, F.S.; prohibiting a franchisor from denying certain persons the opportunity to participate in the ownership of a franchise for a specified period after the death of the franchisee or the person controlling a majority interest; requiring specified persons to meet certain requirements or to sell, transfer, or assign the franchise after the death of the franchisee or the person controlling a majority interest; authorizing a franchisee to sell, transfer, or assign a franchise, specified assets, or an interest in the franchisee under certain circumstances; prohibiting a

16-00129B-17

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franchisor from preventing a franchisee from selling or transferring a franchise, assets of the franchise business, or an interest in the franchisee under certain circumstances; requiring the franchisor to make available and to apply specified requirements for the approval of new or renewing franchises, under certain circumstances; requiring a franchisee to notify a franchisor of certain intent; providing notice requirements; providing application requirements for the proposed purchaser, transferee, or assignee of a franchise, certain assets, or an interest in the franchisee, under certain circumstances; requiring a franchisor to notify a franchisee of the approval status of a proposed sale, assignment, or transfer within a specified timeframe; providing notice requirements; requiring that a franchisor's decision in a claim against a franchisor be a question of fact; providing that a summary judgment is not prohibited under certain circumstances; providing that certain provisions do not prohibit a franchisor from exercising a contractual right of first refusal under certain circumstances; creating s. 686.107, F.S.; providing that a franchisee must have the opportunity to monetize certain equity from the franchise business under certain circumstances; requiring the repurchase by a franchisor of certain inventory, supplies, equipment, good will, and furnishings upon termination, nonrenewal, or expiration of a franchise

16-00129B-17

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subject to certain requirements; providing exceptions;  
authorizing a franchisor to offset money owed to a  
franchisee for the repurchase of certain items with  
money owed by the franchisee to the franchisor;  
providing applicability; providing that a franchisor  
is civilly liable for failing or refusing to  
repurchase certain inventory, supplies, equipment,  
good will, and furnishings under specified  
requirements upon termination, nonrenewal, or  
expiration of a franchise; creating s. 686.108, F.S.;  
requiring the repurchase by a franchisor of certain  
inventory, supplies, equipment, good will, and  
furnishings upon the death or incapacity of a  
franchisee or person controlling a majority interest  
under certain circumstances; providing an exception;  
providing applicability; creating s. 686.109, F.S.;  
requiring a franchisor to indemnify a franchisee under  
certain circumstances; creating s. 686.111, F.S.;  
requiring a franchisor or subfranchisor and a  
franchisee to deal with each other in good faith;  
providing that it is a violation of certain provisions  
for a franchisor to act arbitrarily, capriciously, in  
bad faith, or unconscionably under specified  
circumstances; providing that it is a violation of  
certain provisions for a franchisor and subfranchisor  
to restrict or inhibit specified rights of  
franchisees; prohibiting a franchisor from  
intentionally misrepresenting or failing to disclose  
specified information; providing that certain



16-00129B-17

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violations constitute a misdemeanor of the second degree; providing penalties; providing that a person may be awarded certain damages, attorney fees, and other costs under specified circumstances; providing that certain actions are deemed unfair and deceptive; authorizing the Department of Legal Affairs by itself or jointly with the Department of Agriculture and Consumer Services to sue a franchisor on behalf of certain persons for specified violations; creating s. 686.112, F.S.; providing that a contract or franchise agreement is void and unenforceable under certain circumstances; creating s. 686.113, F.S.; providing notice requirements for the termination, renewal, or expiration of a franchise; creating s. 686.114, F.S.; providing that provisions in a franchise agreement which restrict venue or choice of law are void under certain circumstances; creating s. 686.115, F.S.; providing that the rights of a franchisor and franchisee to agree to binding arbitration are not limited under certain circumstances; creating s. 686.116, F.S.; providing remedies for a franchisee or an aggrieved or injured person under certain circumstances; authorizing punitive damages under certain circumstances; authorizing the Department of Legal Affairs or the state attorney to bring an action for injunctive relief or other civil relief under certain circumstances; clarifying that specified remedies are in addition to existing remedies; creating s. 686.117, F.S.; providing applicability;

16-00129B-17

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amending s. 817.416, F.S.; providing applicability;  
providing a directive to the Division of Law Revision  
and Information; providing an effective date.

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

Section 1. Section 686.101, Florida Statutes, is created to  
read:

686.101 Short title.—Sections 686.101-686.117 may be cited  
as the “Protect Florida Small Business Act.”

Section 2. Section 686.102, Florida Statutes, is created to  
read:

686.102 Legislative findings and intent; construction of  
the act.—

(1) The Legislature finds that the welfare of franchisees,  
including the success and failure of their franchise businesses,  
greatly affects the general economy of this state, the public  
interest, and the public welfare. The intent of the Legislature  
is to promote fair business relations between franchisees and  
franchisors and to protect franchisees against unfair treatment  
by franchisors. Therefore, it is necessary to regulate the  
conduct of franchisors and their representatives in order to  
prevent fraud, unfair business practices, unfair methods of  
competition, impositions, and other abuses upon franchisees in  
this state.

(2) In order to promote the intention and policies  
announced in this section, the provisions of this act shall be  
liberally construed.

Section 3. Section 686.103, Florida Statutes, is created to

16-00129B-17

2017750\_\_

149 read:

150 686.103 Definitions.—As used in this act, the term:

151 (1) "Affiliate" means a person controlling, controlled by,  
152 or under common control with another person or, in the case of a  
153 business entity, such entity's officer, director, or other  
154 person in control of the activities of such entity.

155 (2) "Area franchise" means a contract or agreement,  
156 expressed or implied, written or oral, regardless of whether the  
157 contract or agreement is designated as a franchise, permit,  
158 license, resolution, contract, certificate, agreement, or  
159 otherwise, between a franchisor and another person through which  
160 that person is granted the right, for consideration in whole or  
161 in part for such right:

162 (a) To sell or negotiate the sale of a franchise in the  
163 name or on behalf of the franchisor; or

164 (b) To become an area developer and develop a franchise for  
165 the benefit of that person or that person's affiliates.

166 (3) "Area franchisee" means the owner of an area franchise.

167 (4) (a) "Franchise" or "franchise agreement" means a  
168 contract or agreement, expressed or implied, written or oral,  
169 regardless of whether the contract or agreement is designated as  
170 a franchise, permit, license, resolution, contract, certificate,  
171 agreement, or otherwise, for a definite or indefinite time,  
172 between two or more persons by which:

173 1. A franchisee is granted the right to engage in the  
174 business of offering, selling, or distributing goods or services  
175 under a marketing plan or system prescribed in substantial part  
176 by a franchisor;

177 2. The operation of the franchise business pursuant to that

16-00129B-17

2017750\_\_

marketing plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

3. The franchisee is required to pay, directly or indirectly, a franchise fee.

(b) The term "franchise" or "franchise agreement" includes an area franchise.

(c) The term "franchise" or "franchise agreement" does not include any of the following:

1. A franchise governed by the Agricultural Equipment Manufacturers and Dealers Act.

2. Any activity governed by ss. 686.501-686.506.

3. A franchise governed by the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act.

4. A motor vehicle franchise or agreement governed by ss. 320.60-320.70.

5. A business relation between a beer distributor and a manufacturer governed by s. 563.022.

6. A professional sports franchise as described in s. 288.11625(2)(c).

(5) "Franchise business" means a business unit that is owned or operated by a franchisee and that is subject to a marketing plan or system prescribed by the franchise.

(6) "Franchise fee" means a fee or charge greater than \$100 annually which a franchisee is required to pay or agrees to pay, directly or indirectly, to the franchisor for the right to enter into or continue a franchise, including, but not limited to, a

16-00129B-17

2017750\_\_

207 payment for goods or services. However, any one of the following  
208 is not considered a franchise fee:

209 (a) A fee or charge that a franchisee pays or agrees to pay  
210 the franchisor for goods at a bona fide wholesale price if no  
211 obligation is imposed upon the franchisee to purchase or pay for  
212 a quantity of goods in excess of that which a reasonable person  
213 normally would purchase by way of a starting inventory or supply  
214 or to maintain an ongoing inventory or supply.

215 (b) A payment of a reasonable service charge to the issuer  
216 of a credit card by an establishment accepting or honoring the  
217 credit card.

218 (c) A payment to a trading stamp company by a person who  
219 issues trading stamps in connection with the retail sale of  
220 goods or services.

221 (d) A payment, not exceeding a sum of \$1,000 annually, for  
222 the purchase or rental of fixtures, goods, or other tangible  
223 property necessary for the operation of the franchise business,  
224 if the purchase or rental price does not exceed the cost of  
225 acquiring the fixtures, goods, or other tangible property in the  
226 open market.

227 (7) "Franchisee" means a person to whom a franchise is  
228 offered or granted.

229 (8) "Franchisor" means a person who grants a franchise to a  
230 franchisee.

231 (9) "Fraud" means and includes actual fraud or constructive  
232 fraud as normally defined, in addition to the following:

233 (a) A misrepresentation in any manner, whether  
234 intentionally false or arising from negligence, of a material  
235 fact.

16-00129B-17

2017750\_\_

236 (b) A promise or representation not made honestly and in  
237 good faith.

238 (c) An intentional failure to disclose a material fact.

239 (d) Any artifice employed to deceive another.

240 (10) "Goods" means any article or thing without limitation,  
241 or any part of such article or thing, including any article or  
242 thing used or consumed by a franchisee in rendering a service  
243 established, organized, directed, or approved by a franchisor.

244 (11) "Person" means a natural person, corporation, limited  
245 liability company, association, partnership, trust, or other  
246 business entity and, in the case of a business entity, includes  
247 any other affiliate of such entity.

248 (12) "Sale" means and includes the issuance, transfer,  
249 agreement for transfer, exchange, pledge, hypothecation, or  
250 mortgage in any manner or form, whether by transfer in trust or  
251 otherwise, of any goods or interest therein, or of any franchise  
252 related thereto, for a consideration, and any option,  
253 subscription or other contract, or solicitation, looking to a  
254 sale, or offer or attempt to sell in any form, whether in  
255 written or oral form, for a consideration.

256 Section 4. Section 686.104, Florida Statutes, is created to  
257 read:

258 686.104 Termination.—

259 (1) Except as otherwise provided in this act, a franchisor  
260 may not terminate a franchise except for good cause. The  
261 termination of a franchise without good cause constitutes an  
262 unfair termination, regardless of the specified time period of  
263 the franchise. Except as provided in subsection (2), good cause  
264 is limited to the failure of the franchisee to substantially

16-00129B-17

2017750\_\_

265 comply with the reasonable and material requirements imposed  
266 upon the franchisee by the franchise agreement after being given  
267 notice at least 90 days in advance of the termination and a  
268 reasonable opportunity, which may not be less than 60 days after  
269 the date of the notice of noncompliance, to cure the failure. If  
270 the franchisee cures the failure within the time given to cure,  
271 the termination notice is void.

272 (2) A franchisor may give to a franchisee an immediate  
273 notice of termination without an opportunity to cure if, during  
274 the period in which the franchise is in effect, any one of the  
275 following events, relevant to the franchise, occurs:

276 (a) The franchisee has been the subject of an order for  
277 relief in bankruptcy, has been judicially determined to be  
278 insolvent, has had all or a substantial part of its assets  
279 assigned to or for the benefit of any creditor, or has admitted  
280 its inability to pay its debts as they come due.

281 (b) The franchisee abandons, by failing to operate, the  
282 franchise business for 10 consecutive days during which, under  
283 the terms of the franchise, the franchisee is required to  
284 operate the franchise business, or for any shorter period after  
285 which it is not unreasonable under the facts and circumstances  
286 for the franchisor to conclude that the franchisee does not  
287 intend to continue to operate the franchise business, unless  
288 such failure to operate is due to an act of God; a work  
289 stoppage; a strike or labor difficulty; a fire, flood,  
290 hurricane, or sinkhole; or other causes beyond the franchisee's  
291 control.

292 (c) The franchisor and franchisee agree in writing to  
293 terminate the franchise.

16-00129B-17

2017750\_\_

294       (d) The franchisee fails, for a period of 10 days after a  
295 notice of noncompliance, to comply with any federal, state, or  
296 local law or regulation, including, but not limited to, any  
297 health, safety, building, and labor law or regulation applicable  
298 to the operation of the franchise.

299       (e) A final judgment against the franchisee remains  
300 unsatisfied for 30 days, and the franchise business or franchise  
301 business premises are seized, taken over, or foreclosed by a  
302 government official exercising his or her duties, or seized,  
303 taken over, or foreclosed by a creditor, lienholder, or lessor,  
304 unless a supersedeas or other appeal bond has been filed.

305       (f) A levy of execution has been made on the license  
306 granted by the franchise or on a property used in the franchise  
307 business and is not discharged within 5 days after such levy.

308       (g) The franchisee is convicted of a felony or any other  
309 criminal misconduct that significantly, directly, and adversely  
310 affects the operation of the franchise business.

311       (h) The franchisor makes a reasonable determination that  
312 continued operation of the franchise business by the franchisee  
313 will result in imminent and substantial danger to public health  
314 or safety.

315       Section 5. Section 686.105, Florida Statutes, is created to  
316 read:

317       686.105 Nonrenewal.—

318       (1) A franchise agreement is deemed to be continuing unless  
319 the franchisor has complied with subsection (2).

320       (2) A franchisor may not refuse to renew a franchise unless  
321 all of the following criteria have been met:

322       (a) The franchisor provides written notice to the



16-00129B-17

2017750\_\_

franchisee of the franchisor's intent not to renew at least 180 days before the expiration date or before an extension of the franchise agreement.

(b) Any of the following circumstances exist:

1. Termination of the franchise agreement is authorized under s. 686.104.

2. The franchisor and franchisee agree in writing not to renew the franchise.

3. The franchisor completely withdraws from directly or indirectly distributing its products or services in the geographic market served by the franchisee.

(c) The franchisor agrees not to enforce against the franchisee, upon nonrenewal of the franchise, any covenant not to compete with the franchisor or with other franchisees of the franchisor.

(d) The nonrenewal of the franchise is not for the purpose of converting the franchise business to operation by an employee or agent of the franchisor for the franchisor's own account.

(e) If the franchisor determines to sell, transfer, or assign its interest in the marketing premises occupied by a franchisee whose franchise agreement is not renewed, either:

1. The franchisor, during the 180-day period after giving notice to the franchisee of its determination to sell, transfer, or assign its interest, provides the franchisee a right of first refusal of at least 30 days' duration of a bona fide offer made by another to purchase the franchisor's interest in the premises; or

2. The franchisor or the purchaser, transferee, or assignee of the franchisor's interest in good faith offers the franchisee

16-00129B-17

2017750\_\_

352 a franchise on substantially the same terms and conditions being  
353 offered by such purchaser, transferee, or assignee to other  
354 franchisees at the time the franchisor determines to sell,  
355 transfer, or assign its interests.

356 (3) As a condition of renewal, a franchise agreement may  
357 require that the franchisee meet the reasonable qualifications  
358 for new franchisees existing at the time of renewal and that the  
359 franchisee execute a new franchise agreement incorporating terms  
360 and fees existing for new franchises at the time of renewal.

361 (4) A franchisee who receives a notice of intent not to  
362 renew a franchise agreement may file an action or request  
363 arbitration within the 180-day notice period to seek a  
364 determination of whether the nonrenewal is proper under ss.  
365 686.104-686.106. The franchise agreement and all other related  
366 agreements between the franchisor and the franchisee must  
367 continue in effect until a preliminary determination of the  
368 issues raised in the action or arbitration is made by the court  
369 or arbitrator.

370 Section 6. Section 686.106, Florida Statutes, is created to  
371 read:

372 686.106 Sales, transfers, and assignments.—

373 (1) A franchisor may not deny the surviving spouse, heir,  
374 or estate of a deceased franchisee or of the person controlling  
375 a majority interest in the franchisee the opportunity to  
376 participate in the ownership of the franchise or franchise  
377 business under a valid franchise agreement for at least 180 days  
378 after the death of the franchisee or person controlling a  
379 majority interest in the franchisee. During that time, the  
380 surviving spouse, heir, or estate of the deceased must either

16-00129B-17

2017750\_\_

381 meet all of the existing reasonable qualifications for a  
382 purchaser of a franchise or must sell, transfer, or assign the  
383 franchise to a person who meets the franchisor's existing  
384 reasonable qualifications for new franchisees. The rights  
385 granted to the surviving spouse, heir, or estate under this  
386 section are granted subject to the surviving spouse, heir, or  
387 estate of the deceased maintaining all standards and obligations  
388 of the franchise.

389 (2)(a) A franchisee may sell, transfer, or assign a  
390 franchise, all or substantially all of the assets of the  
391 franchise business, or an interest in the franchisee with the  
392 prior written consent of the franchisor. The franchisor's  
393 consent may not be withheld unless the purchaser, transferee, or  
394 assignee does not meet the qualifications for new or renewing  
395 franchisees described in paragraph (b) or the franchisee and the  
396 purchaser, transferee, or assignee fail to comply with other  
397 reasonable transfer conditions specified in the franchise  
398 agreement.

399 (b) A franchisor may not prevent a franchisee from selling,  
400 transferring, or assigning a franchise, all or substantially all  
401 of the assets of the franchise business, or an interest in the  
402 franchisee to another person if the other person meets the  
403 franchisor's reasonable qualifications for the approval of new  
404 or renewing franchises in effect at the time the franchisor  
405 receives notice of the proposed sale, transfer, or assignment.  
406 The franchisor shall make this list of qualifications available  
407 to the franchisee, as provided in subsection (3), and the  
408 franchisor shall consistently apply such qualifications to  
409 similarly situated franchisees operating within the franchise

16-00129B-17

2017750\_\_

brand.

(3) (a) To invoke the protections under this section, a franchisee must, before the sale, transfer, or assignment of a franchise, all or substantially all of the assets of the franchise business, or an interest in the franchisee, notify the franchisor of the franchisee's intent to sell, transfer, or assign. The notice must be in writing; must be delivered to the franchisor by certified or registered mail, return receipt requested, or by business courier; and must include all of the following:

1. The name and address of the proposed purchaser, transferee, or assignee.

2. A copy of all agreements related to the sale, transfer, or assignment of the franchise, the assets of the franchise business, or the interest in the franchisee.

3. The proposed purchaser's, transferee's, or assignee's application for approval to become the successor franchisee.

(b) The proposed purchaser's, transferee's, or assignee's application must include all forms, financial disclosures, and related information generally used by the franchisor in reviewing prospective new franchisees, if those forms are readily made available to the existing franchisee. If the forms are not readily available, the franchisee shall request, and the franchisor shall deliver, the forms to the franchisee by certified or registered mail, return receipt requested, or by business courier, within 15 calendar days after the franchisee's request. As soon as practicable after receipt of the proposed purchaser's, transferee's, or assignee's application, the franchisor shall notify the franchisee and the proposed

16-00129B-17

2017750\_\_

439 purchaser, transferee, or assignee in writing of any additional  
440 information or documentation necessary to complete the sale,  
441 transfer, or assignment application. If the franchisor's list of  
442 qualifications for the approval of new or renewing franchisees  
443 in effect at the time the franchisor receives notice of the  
444 proposed sale, transfer, or assignment is not readily available  
445 to the franchisee when the franchisee notifies the franchisor of  
446 the franchisee's intent to sell, transfer, or assign the  
447 franchise, all or substantially all of the assets of the  
448 franchise business, or an interest in the franchisee, the  
449 franchisor must communicate the list of qualifications to the  
450 franchisee within 15 calendar days after receipt of the proposed  
451 purchaser's, transferee's, or assignee's application.

452 (c)1. The franchisor shall, within 60 days after receipt of  
453 all of the necessary information and documentation required  
454 under paragraph (a), or as specified by written agreement  
455 between the franchisor and the franchisee, notify the franchisee  
456 of the approval or disapproval of the proposed sale, transfer,  
457 or assignment. The notice must be in writing and be delivered to  
458 the franchisee by certified or registered mail, return receipt  
459 requested, or by business courier. If the proposed sale,  
460 transfer, or assignment is disapproved, the franchisor must  
461 include in the notice of disapproval a statement specifying the  
462 reasons for the disapproval. A proposed sale, transfer, or  
463 assignment is deemed approved unless disapproved by the  
464 franchisor in the manner provided in this subparagraph.

465 2. In a claim against the franchisor for disapproval of a  
466 sale, transfer, or assignment, the reasonableness of the  
467 franchisor's decision is a question of fact requiring

16-00129B-17

2017750\_\_

468 consideration of all existing circumstances. This paragraph does  
469 not prohibit summary judgment when the reasonableness of the  
470 disapproval of a sale, transfer, or assignment can be decided as  
471 a matter of law.

472 (4) This section does not prohibit a franchisor from  
473 exercising the contractual right of first refusal to purchase a  
474 franchise, all or substantially all of the assets of a franchise  
475 business, or an interest in a franchisee after receipt of a bona  
476 fide offer from a proposed seller to purchase the franchise,  
477 assets, or interest. A franchisor exercising the contractual  
478 right of first refusal shall offer the seller payment at least  
479 equal to the value offered in the bona fide offer.

480 Section 7. Section 686.107, Florida Statutes, is created to  
481 read:

482 686.107 Repurchase of inventory upon termination,  
483 nonrenewal, or expiration of a franchise agreement.-

484 (1) (a) A franchisee must have the opportunity to monetize  
485 any equity that the franchisee may have developed in the  
486 franchise business before the termination of the franchise  
487 agreement without transferring the equity in the franchisor's  
488 intellectual property to the franchisee. Therefore, upon  
489 termination, nonrenewal, or expiration of a franchise agreement,  
490 a franchisor shall repurchase at fair market value inventory,  
491 supplies, goods, fixtures, equipment, and furnishings of the  
492 franchise business. The franchisor shall also purchase the  
493 goodwill of the franchise business.

494 (b) This section does not require the franchisor to  
495 purchase any personalized items, inventory, supplies, goods,  
496 fixtures, equipment, or furnishings that are not reasonably

16-00129B-17

2017750\_\_

497 required to conduct the operation of the franchise business in  
498 accordance with the franchise agreement or any ancillary or  
499 collateral agreement or whose title and possession are not, or  
500 cannot be, lawfully granted by the franchisee to the franchisor  
501 upon the franchisor's payment to the franchisee for the  
502 inventory, supplies, goods, fixtures, equipment, or furnishings  
503 at the time the franchisee ceases to operate the franchise  
504 business.

505 (c) Upon the termination, nonrenewal, or expiration of a  
506 franchise, a franchisor may offset money owed to the franchisee  
507 under this section with any amount owed by the franchisee to the  
508 franchisor.

509 (d) This section does not apply if the franchisee declines  
510 a bona fide offer of renewal from the franchisor which is  
511 consistent with s. 686.105 and the franchise agreement between  
512 the franchisor and franchisee.

513 (e) This section does not apply if the franchisor does not  
514 prevent the franchisee from retaining control and continuing to  
515 operate the franchise business.

516 (f) This section does not apply if the franchisor and  
517 franchisee agree in writing to terminate or not renew the  
518 franchise or to allow the franchise to expire.

519 (g) This section does not apply to inventory, supplies,  
520 goods, fixtures, equipment, or furnishings sold by the  
521 franchisee between the date of the notice of termination,  
522 nonrenewal, or expiration and the date the franchisee ceases to  
523 operate the franchise business pursuant to a termination,  
524 nonrenewal, or expiration.

525 (2) If a franchisor fails or refuses to repurchase any

16-00129B-17

2017750\_\_

inventory, supplies, goods, fixtures, equipment, good will, or  
furnishings required to be repurchased under subsection (1)  
within 60 days after the termination, nonrenewal, or expiration  
of a franchise, the franchisor is civilly liable for the entire  
value of the inventory, supplies, goods, fixtures, equipment,  
good will, and furnishings required to be repurchased under  
subsection (1), plus the franchisee's reasonable attorney fees,  
court costs, and interest on the inventory, supplies, goods,  
fixtures, equipment, good will, and furnishings computed at the  
legal interest rate provided in s. 687.01 from the 61st day  
after termination.

Section 8. Section 686.108, Florida Statutes, is created to  
read:

686.108 Repurchase of inventory upon death or incapacity of  
a franchisee.—

(1) In the event of the death or incapacity of a franchisee  
or person controlling a majority interest in the franchisee, the  
franchisor must, at the option of the heir at law, if the  
franchisee died intestate, the devisee under the terms of the  
deceased franchisee's last will and testament, if the franchisee  
died testate, or the person holding a power of attorney or a  
guardian in the event of incapacity, repurchase the inventory,  
supplies, goods, fixtures, equipment, good will, and furnishings  
under s. 686.107. The repurchase provisions of s. 686.107 are  
made expressly applicable to the repurchase under this section.  
The heir, devisee, transferee, person holding a power of  
attorney, or guardian has 1 year after the date of the death or  
incapacity, as applicable, of the franchisee or person  
controlling a majority interest to exercise his or her option to



16-00129B-17

2017750\_\_

555 sell the inventory, supplies, goods, fixtures, equipment, good  
556 will, and furnishings of the franchise business. However, this  
557 section does not require the repurchase of inventory, supplies,  
558 goods, fixtures, equipment, good will, and furnishings in the  
559 event of death if the heir, devisee, or transferee and the  
560 franchisor enter into a new franchise agreement to operate the  
561 franchise business.

562 (2) This section is subject to the portion of the franchise  
563 agreement pertaining to death or incapacity of a franchisee or  
564 person controlling a majority interest to the extent that the  
565 franchise agreement is not inconsistent with this section.

566 Section 9. Section 686.109, Florida Statutes, is created to  
567 read:

568 686.109 Indemnification of franchisee.—A franchisor shall  
569 fully indemnify and hold harmless its franchisee against any  
570 loss, including, but not limited to, court costs and reasonable  
571 attorney fees or damages arising out of a complaint, claim, or  
572 lawsuit involving, but not limited to, strict liability,  
573 negligence, misrepresentation, express or implied breach of  
574 warranty, or rescission of a sale if the complaint, claim, or  
575 lawsuit relates to a part or an accessory; to the manufacture,  
576 assembly, or design of goods or services covered under this act;  
577 or to other functions of the franchisor which are beyond the  
578 control of the franchisee.

579 Section 10. Section 686.111, Florida Statutes, is created  
580 to read:

581 686.111 Rights and prohibitions.—The following rights and  
582 prohibitions govern the relations between a franchisor or  
583 subfranchisor and its franchisee:

16-00129B-17

2017750\_\_

584       (1) The parties shall deal with each other in good faith.

585       (2) A franchisor or subfranchisor may not engage in any  
586 action that is arbitrary, capricious, in bad faith, or  
587 unconscionable and, in terms of law or equity, causes damage to  
588 a franchisee or to the public.

589       (3) A person may not, during the selling or establishing of  
590 a franchise, intentionally misrepresent or fail to disclose:

591       (a) The prospects or chances for success of the proposed or  
592 existing franchise;

593       (b) The known required total investment for such franchise;  
594 or

595       (c) Any effort to sell or establish more franchises than is  
596 reasonable to expect the market or market area for the  
597 particular franchise to sustain.

598       (4) It is prohibited and deemed an unfair and deceptive act  
599 or practice, or an unfair method of competition, and a violation  
600 of this section for a franchisor or subfranchisor, or an  
601 officer, agent, employee, or other representative thereof, to  
602 directly or indirectly:

603       (a) Coerce, compel, or attempt to coerce or compel a  
604 franchisee to enter into an agreement, written or oral,  
605 supplementary to an existing franchise with the franchisor, or  
606 the officer, agent, or other representative thereof; or commit  
607 any other act prejudicial to the franchisee by threatening to  
608 cancel the franchise or any contractual agreement existing  
609 between the franchisor and the franchisee. However, notice in  
610 good faith to the franchisee of the franchisee's violation or  
611 breach of a term or provision of the franchise or contractual  
612 agreement does not constitute a violation of this section if

16-00129B-17

2017750\_\_

613 such notice is in writing, is mailed by registered or certified  
614 mail to the franchisee at its current business address, and  
615 contains the specific facts as to the franchisee's violation or  
616 breach of the franchise or contractual agreement;

617 (b) Terminate or fail to renew a franchise agreement in  
618 violation of this act;

619 (c) Allow a franchise agreement to expire without complying  
620 with this act;

621 (d) Fail to repurchase inventory, supplies, goods,  
622 fixtures, equipment, good will, and furnishings in violation of  
623 s. 686.107 or s. 686.108;

624 (e) Prevent a sale, transfer, or assignment of a franchise  
625 in violation of s. 686.106;

626 (f) Violate the Florida Deceptive and Unfair Trade  
627 Practices Act in connection with its business as a franchisor,  
628 or an officer, agent, or other representative thereof;

629 (g) Resort to or use false or misleading advertisement in  
630 connection with its business as a franchisor, or an officer,  
631 agent, or other representative thereof;

632 (h) Willfully discriminate, directly or indirectly, in  
633 price, programs, or terms of sale offered to a franchisee or  
634 give to a franchisee an economic, business, or competitive  
635 advantage not offered to another franchisee of the same or  
636 similar franchise;

637 (i) Impose, directly or indirectly, an unreasonable  
638 restriction on a franchisee relative to transfer, renewal,  
639 termination, location, or site control;

640 (j) Without prior written disclosure to a franchisee,  
641 obtain money, goods, services, anything of value, or any other

16-00129B-17

2017750\_\_

benefit from another person with whom the franchisee does  
business or employs on account of or in relation to the  
transactions between the franchisee, the franchisor, and the  
other person;

(k) Require a franchisee to assent to a release,  
assignment, novation, waiver, or estoppel that would relieve any  
person from liability imposed under this act, including, but not  
limited to, through the use of a disclaimer or checklist  
designed to avoid a protection under this act;

(l) Require a franchisee to assent to the use of a choice  
of law provision by selecting a different state's law to govern  
the relationship of the parties;

(m) Restrict or inhibit, directly or indirectly, the right  
of a franchisee to join a trade association or the free  
association for any lawful purpose among franchisees;

(n) Compete with a franchisee within the franchisee's  
exclusive territory or grant a franchise to another person for a  
franchise business to be located within the exclusive territory;

(o) Impose upon a franchisee, by contract or rule, written  
or oral, any unreasonable standard of conduct; or

(p) Require a franchisee to waive its rights to a jury  
trial or waive any procedure or remedy otherwise available in  
this state, however, a binding arbitration clause is enforceable  
if it complies with s. 686.115.

(5) A person who executes or carries out a scheme, plan, or  
organization that violates any provision of this section, if  
knowledge or intent is proved, commits a misdemeanor of the  
second degree, punishable as provided in ss. 775.082 and  
775.083.

16-00129B-17

2017750\_\_

671       (6) A person who shows in a civil court of law a violation  
672 of this section shall receive a judgment for all money invested  
673 in the franchise and all of the franchise business's losses and  
674 other damages incurred while running the franchise business.  
675 Upon such a showing, the court shall award reasonable attorney  
676 fees to any person holding an interest in a franchise or who has  
677 been injured by a violation of this act, and who is bringing the  
678 action against the person who violates this section and  
679 reasonable costs incurred in bringing such action.

680       (7) The Department of Legal Affairs, by itself or jointly  
681 with the Department of Agriculture and Consumer Services, may  
682 sue on behalf of the people of this state for injunctive relief  
683 against any franchisor plan or activity that is in violation of  
684 this act.

685       Section 11. Section 686.112, Florida Statutes, is created  
686 to read:

687       686.112 Unenforceable franchise agreement or other  
688 contract.—A franchise agreement or other contract, a part  
689 thereof or practice thereunder, which is in violation of any  
690 provision of this act is deemed against public policy and is  
691 void and unenforceable.

692       Section 12. Section 686.113, Florida Statutes, is created  
693 to read:

694       686.113 Notice requirements.—A notice of termination,  
695 nonrenewal, or expiration required under ss. 686.104-686.106  
696 must:

- 697       (1) Be in writing;  
698       (2) Be posted by registered or certified mail, return  
699 receipt requested, or be personally delivered to the franchisee;

16-00129B-17

2017750\_\_

and

(3) Contain a statement of intent to terminate, not renew, or allow the franchise to expire; the reasons for the termination, nonrenewal, or expiration; and the effective date of the termination, nonrenewal, or expiration.

Section 13. Section 686.114, Florida Statutes, is created to read:

686.114 Venue; choice of law.—A provision in a franchise agreement restricting the venue to a forum outside of this state or selecting the law of any other state or jurisdiction other than Florida is void with respect to any claim arising under or relating to a franchise agreement involving a franchisee that was, at the time of signing, a resident of this state or a business entity established in this state or involving a franchise business either operating or planning to be operated in this state.

Section 14. Section 686.115, Florida Statutes, is created to read:

686.115 Arbitration.—This act does not limit the right of a franchisor and franchisee to agree, before or after a dispute arises, to binding arbitration to settle a claim under this act if:

(1) The standards applied and the remedies available in the arbitration are not less than the requirements specified in this act; and

(2) Each arbitrator employed is chosen from a list of impartial arbitrators provided by the American Arbitration Association or is any other impartial person.

Section 15. Section 686.116, Florida Statutes, is created

16-00129B-17

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to read:

686.116 Remedies.—

(1) If a franchisor terminates, fails to renew, or allows a franchise to expire in violation of this act, the franchisee is entitled to receive from the franchisor the fair market value of the franchise business and franchise assets in addition to any other damage caused by the violation.

(2) In addition to any relief specified in this act, any person aggrieved or injured in his or her business or property by a violation of this act may bring an action in the appropriate state or federal court of this state and shall recover the damages sustained and the costs of such action, including reasonable attorney fees.

(3) Without regard and in addition to any other remedy or relief to which a person is entitled, any person aggrieved by a violation of this act may bring an action to obtain a declaratory judgment stating that an action or a practice violates these sections and may obtain injunctive relief enjoining a franchisor that has violated, is violating, or is otherwise likely to violate these sections from committing the violation.

(4) In an action for money damages, if a judge or jury finds that the franchisor has acted maliciously, the judge or jury may award punitive damages as authorized by state law.

(5) The Department of Legal Affairs or the state attorney may bring an action for injunctive relief or other appropriate civil relief for a violation of this act if the violation occurs in the judicial circuit of the department or the state attorney, respectively.

16-00129B-17

2017750\_\_

758       (6) The remedies provided in this section are in addition  
759 to any other remedies provided by law or in equity, including,  
760 but not limited to, the Florida Deceptive and Unfair Trade  
761 Practices Act.

762       Section 16. Section 686.117, Florida Statutes, is created  
763 to read:

764       686.117 Applicability.—

765       (1) Any person or franchisor who engages directly or  
766 indirectly in an agreement or contract within this state in  
767 connection with a franchise; or any franchise whose franchisee  
768 is a resident of this state or is domiciled in this state or  
769 whose franchise business is, has been, or is intended to be  
770 operated in this state, is subject to this act and to the  
771 jurisdiction of the courts of this state, in accordance with the  
772 laws of this state, for violations of this act.

773       (2) This act applies to:

774       (a) Any written or oral agreement between a franchisor and  
775 a franchisee, including, but not limited to, a franchise  
776 offering; a franchise agreement; a sale of goods, services, and  
777 advertising; a lease or mortgage of real or personal property; a  
778 promise to pay; a security interest; a pledge; an insurance  
779 contract; an advertising contract; a construction or  
780 installation contract; a servicing contract; and any other  
781 agreement in which the franchisor has a direct or indirect  
782 interest;

783       (b) Any franchise entered into, renewed, amended, or  
784 revised after the effective date of this act;

785       (c) Any existing franchise of an indefinite duration which  
786 may be terminated by the franchisee or franchisor without cause;



16-00129B-17

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787 and

788 (d) Any existing franchise entered into before the  
789 effective date of this act, only to the extent that this act  
790 does not significantly impair the existing contract rights  
791 between the parties.

792 (3) This act is supplemental to, and does not preempt,  
793 local ordinances dealing with prohibited or unlawful conduct in  
794 the manufacturing, distribution, wholesaling, advertising, or  
795 sale of goods if such ordinances are not inconsistent with this  
796 act.

797 (4) This act supersedes s. 817.416 with respect to any  
798 franchisee that signs a franchise agreement on or after the  
799 effective date of this act. Section 817.416 continues to govern  
800 the claims of all franchisees that signed franchise agreements  
801 or were victims of fraud perpetrated before the effective date  
802 of this act, as well as distributors and any other entities,  
803 past, present, or future, which would be covered by s. 817.416,  
804 but not by this act.

805 Section 17. Subsection (5) is added to section 817.416,  
806 Florida Statutes, to read:

807 817.416 Franchises and distributorships;  
808 misrepresentations.—

809 (5) APPLICABILITY.—This section does not apply to a  
810 franchise entered into, renewed, amended, or revised on or after  
811 the effective date of this act. A franchise entered into,  
812 renewed, amended, or revised on or after the effective date of  
813 this act is subject to ss. 686.101-686.117.

814 Section 18. The Division of Law Revision and Information is  
815 directed to replace the phrase "the effective date of this act"

16-00129B-17

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816 wherever it occurs in this act with the date the act becomes a  
817 law.

818 Section 19. This act shall take effect upon becoming a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/2017

Meeting Date

750

Bill Number (if applicable)

Topic Franchises

Amendment Barcode (if applicable)

Name Melissa Fause

Job Title Deputy Director of Policy

Address 200 W. College Ave Ste 109

Phone 850-408-1218

Street

Tallahassee

City

FL

State

32301

Zip

Email mfause@afphq.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-4-17

Meeting Date

U

SB750

Bill Number (if applicable)

Topic Franchising

Amendment Barcode (if applicable)

Name MATT HOLMES

Job Title Franchisee

Address 14213 Otter Run Rd  
Street

Phone 850-509-4759

Tallahassee FL 32312  
City State Zip

Email mholmes@finehousesubs.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Fine House Subs

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

3

58 750

Bill Number (if applicable)

Topic FRANCHISING

Amendment Barcode (if applicable)

Name Chris Holmes

Job Title Area Representative

Address 3018 Kinner Rowe Dr

Phone (850) 567-5171

Tallahassee FL FL 32309  
City State Zip

Email chholmes@firehouselube.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FIREHOUSE SUBS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

SB 750

Bill Number (if applicable)

Topic

Franchise Relations

Amendment Barcode (if applicable)

Name

Hani Binnie

Job Title

Corporate Counsel

Address

5210 Belfort Rd Ste 300

Street

Jacksonville

City

FL

State

32216

Zip

Phone (904) 899-6116

Email hani.binnie@pauldavis.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing

Paul Davis Restoration, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

4-4-17

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 750

Bill Number (if applicable)

Topic Franchising

Amendment Barcode (if applicable)

Name Marilyn Buck

Job Title Owner of FASTSIGNS

Address 1920 N. Monroe St.

Phone 850-894-2400

Street

Tallahassee FL

City

State

Zip

Email marilyn.buck@fastsigns.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FASTSIGNS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**



April 4, 2017

*Meeting Date*

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 750

*Bill Number (if applicable)*

Topic Franchises

*Amendment Barcode (if applicable)*

Name Jeff Hanscom

Job Title Senior Director, State Government Relations

Address 1900 K St NW, Suite 700

Phone 202-662-4179

*Street*

Washington

DC

20006

*City*

*State*

*Zip*

Email jhanscom@franchise.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing International Franchise Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3:45 PM Barney Bishop  
this speaker is on  
high way from east  
and 45 minutes  
7:50 out

4/4/17

Meeting Date

Bill Number (if applicable)

826202

Amendment Barcode (if applicable)

Topic Protect FL Small Business Act

Name Edwin Shanahan

Job Title Executive Director

Address 1951 Northeast 39th St. #252

Phone

Street

Lighthouse Point FL 33064

Email

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Coalition of Franchisee Associations

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

4/4/12  
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 750  
Bill Number (if applicable)

Topic Franchise

026202  
Amendment Barcode (if applicable)

Name Jan Gautam

Job Title President

gautam.jg@gmail.com

Address 5734 S. Semoran Blvd  
Street

Phone 321-302-1258

Orlando FL 32822  
City State Zip

Email gautam.jg@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

4/4/17

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 750

Bill Number (if applicable)

826206

Amendment Barcode (if applicable)

Topic Small Business (Franchise)Name Danny GackwadJob Title PresidentAddress 512 E. Silver Springs Blvd

Street

Ocala FL 34470

City

State

Zip

Phone 352-425-0177Email Danny@ndysallc.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing SelfAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

SB 750

Bill Number (if applicable)

826202

Amendment Barcode (if applicable)

Topic Protect Florida Small Business Act

Name HEMANT "HENRY" PATEL

Job Title Past President

Address 7150 BISCAYNE BLVD

Street

MIAMI

City

FL

State

33138

Zip

Phone 305 992 9099

Email HEMANTKING@

Yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Asian American Hotel owners Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17  
Meeting Date

SB-750  
Bill Number (if applicable)

Topic Franchising

826202  
Amendment Barcode (if applicable)

Name Nash Patel

Job Title OWNER

Address 6919 Pensacola Ave  
Street

Phone 850-393-1780

Pensacola FL 32505  
City State Zip

Email jay@lhs.cc

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

SB 750

Bill Number (if applicable)

826202

Amendment Barcode (if applicable)

Topic Franchise

Name Jay S. Patel

Job Title Owner & Franchisee

Address 6919 Pensacola Blvd

Street

Pensacola

City

FL

State

32505

Zip

Phone 850-393-1779

Email nash@lhs.cc

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Self (AAHQA)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/4/17

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

750

Bill Number (if applicable)

020202

Amendment Barcode (if applicable)

Topic Franchises

Name ARUN KUNDRA

Job Title President, Capital City Travel Center Inc

Address 2716 Gamble Rd Monticello FL 32344

Street

Phone

850-997-3538

Monticello

City

FL

State

32344

Zip

Email

akkundra@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



April 3, 2017

Chairman Travis Hutson  
Committee on Regulated Industries  
The Florida Senate  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Re: Support for the Protect Florida Small Business Act (SB 750)

Dear Chairman Hutson:

On behalf of more than 41,000 franchisees owning more than 86,000 businesses and employing over 1.4 million individuals, we ask for your support of the Protect Florida Small Business Act (SB 750) a bill that protects the rights of Florida's franchisees.

The Coalition of Franchisee Associations (CFA), is the largest franchisee-only trade association in the country, bringing together the largest and most reputable independent franchisee associations with a mission "to leverage the collective strengths of franchisee associations for the benefit of the franchisee community." The CFA represents 19 franchisee associations whose members own brands including Subway, Burger King, 7-Eleven, Planet Fitness, Buffalo Wild Wings, Dunkin' Donuts, Meineke, Kumon Learning Centers, Domino's, and Edible Arrangements - among others.

Across the country, millions of small business owners embrace the entrepreneurial spirit and support their local communities by opening their own franchise. However, some franchisees are not able to run their businesses successfully due to imbalanced franchise agreements that favor the franchisor. Current franchise agreements, which are drafted by franchise lawyers and whose disclosure documents are hundreds of pages long, present a "take it or leave it" situation wherein franchisees are often presented with deceptive claims yet cannot negotiate the terms of their contract. Further, franchise agreements are often substantially changed via franchise Operations Manuals which are not within the four corners of the signed agreement.

The Protect Florida Small Business Act protects Florida's small business owners by allowing them the freedom to run their franchises. By giving franchisees more protections when renewing, transferring and selling their businesses, the Act provides added security for franchisees to reinvest and grow their business. Upon termination, the Act requires the franchisor to repurchase the business' inventory, identifying a franchisee's longstanding property rights in his or her business.

Franchisees invest hundreds of thousands of dollars in their businesses. They support the local communities, employ the citizens of the state, and pay taxes in Florida. Despite frequent turnover in franchise ownership, franchisees invest decades, if not an entire lifetime, into their business.

The CFA fully supports The Protect Florida Small Business Act and asks that you vote in favor of this important piece of legislation. Thank you for your consideration.

Sincerely,

Keith R. Miller  
Chairman, CFA

Misty Chally  
Executive Director, CFA

cc: Members of the Senate Committee on Regulated Industries





**Anthony Szambecki**  
**P.O. Box 339**  
**Captiva, FL 33924**

April 3, 2017

Members of the Florida Senate Regulated Industries Committee  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Re: Support for the Protect Florida Small Business Act (SB 750)

Members of the Senate Regulated Industries Committee,

I ask for your support of the Protect Florida Small Business Act (SB 750) a bill that protects the rights of Florida's franchisees.

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Franchisees invest hundreds of thousands of dollars in their businesses. They support the local communities, employ the citizens of the state, and pay taxes in Florida. Despite frequent turnover in franchise ownership, franchisees invest decades, if not an entire lifetime, into their business.

I fully support The Protect Florida Small Business Act and ask that you vote in favor of this important piece of legislation. Thank you for your consideration.

Sincerely,



Anthony E. Szambecki  
Pizza Hut Franchisee



National Coalition of Associations  
of 7-Eleven Franchisees

April 3, 2017

Members of the Florida Senate Regulated Industries Committee  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Re: Support for the Protect Florida Small Business Act (SB 750)

Members of the Senate Regulated Industries Committee,

On behalf of more than 41,000 franchisees owning more than 86,000 businesses and employing over 1.4 million individuals, we ask for your support of the Protect Florida Small Business Act (SB 750) a bill that protects the rights of Florida's franchisees.

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Franchisees invest hundreds of thousands of dollars in their businesses. They support the local communities, employ the citizens of the state, and pay taxes in Florida. Despite frequent turnover in franchise ownership, franchisees invest decades, if not an entire lifetime, into their business.

The CFA fully supports The Protect Florida Small Business Act and asks that you vote in favor of this important piece of legislation. Thank you for your consideration.

Sincerely,

*Joe Zales*  
Chairman

740 Front Street ■ Suite 170 ■ Santa Cruz, CA 95060 ■ Office: 831-426-4711 ■ Fax: 831-426-4713

E-mail: [nationalcoalition@NCASEF.com](mailto:nationalcoalition@NCASEF.com) ■ Website: [www.NCASEF.com](http://www.NCASEF.com)



April 1, 2017

Chairman Travis Hutson  
Senate Committee on Regulated Industries  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Re: Support for the Protect Florida Small Business Act (SB 750)

Dear Chairman Hutson:

I am writing to you on behalf of members of the International Association of Kumon Franchisees (IAKF) who employ more than 600 people in Florida and 13,000 in the United States.

Kumon Centers are valuable members of communities all over Florida, helping support children academically and working closely with schools to support extra-curricular programs offered through PTA events.

Kumon Owners witnessed an unfair closure in Florida several years ago. Our franchisor robbed our member of her business and displaced 350 students in her community. It put undue stress on the owner, losing not only her equity but costing her \$30,000 in rent and fees. This cannot happen again!

We support The Protect Florida Small Business Act because it protects Florida's small business owners by allowing them the freedom to run their franchises. It gives franchisees more protections when renewing, transferring and selling their businesses, the Act also provides added security for franchisees to reinvest and grow their business. Upon termination, the Act requires the franchisor to repurchase the business' inventory, identifying a franchisee's longstanding property rights in his or her business.

Franchisees invest hundreds of thousands of dollars in their businesses. They support the local communities, employ the citizens of the state, and pay taxes in Florida. Our franchisor corporate office does not.

IAKF fully supports The Protect Florida Small Business Act and asks that you vote in favor of this important piece of legislation. Thank you for your consideration.

Sincerely,

Connie Schmidt Kirman  
Kumon Franchisee  
President, IAKF

cc: Members of the Senate Committee on Regulated Industries



## INDEPENDENT ORGANIZATION OF LITTLE CAESAR FRANCHISEES

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April 3rd, 2017

Chairman Travis Hutson  
Florida Senate Regulated Industries Committee  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Re: Support for the Protect Florida Small Business Act (SB 750)

Dear Chairman Hutson:

On behalf of the Little Caesars Pizza Florida based franchisees who operate nearly 200 franchised businesses in your state, we ask for your support of the Protect Florida Small Business Act (SB 750) a bill that protects the rights of Florida's franchisees.

The IOLCF, Independent Organization of Little Caesar Franchisees, represents the franchisees of the Little Caesar Enterprises pizza chain. We are an association of business owners dedicated to preserving and enhancing the economic and business conditions for the Little Caesars pizza operators.

Across the country, millions of small business owners embrace the entrepreneurial spirit and support their local communities by opening their own franchise. However, some franchisees are not able to run their businesses successfully due to imbalanced franchise agreements that favor the franchisor. Current franchise agreements, which are drafted by franchise lawyers and whose disclosure documents are hundreds of pages long, present a "take it or leave it" situation wherein franchisees are often presented with deceptive claims yet cannot negotiate the terms of their contract. Further, franchise agreements are often substantially changed via franchise Operations Manuals which are not within the four corners of the signed agreement.

The Protect Florida Small Business Act protects Florida's small business owners by allowing them the freedom to run their franchises. By giving franchisees more protections when renewing, transferring and selling their businesses, the Act provides added security for franchisees to reinvest and grow their business. Upon termination, the Act requires the franchisor to repurchase the business' inventory, identifying a franchisee's longstanding property rights in his or her business.

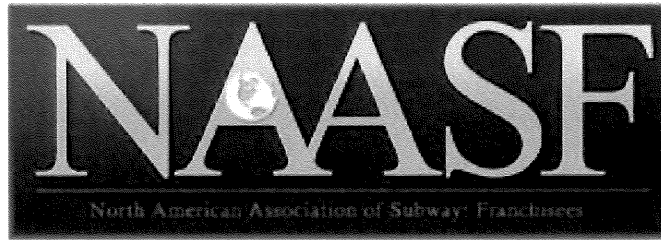
Franchisees invest hundreds of thousands of dollars in their businesses. They support the local communities, employ the citizens of the state, and pay taxes in Florida. Despite frequent turnover in franchise ownership, franchisees invest decades, if not an entire lifetime, into their business.

The IOLCF fully supports The Protect Florida Small Business Act and asks that you vote in favor of this important piece of legislation. Thank you for your consideration.

Sincerely,

Todd Messer  
Executive Director

cc: Members of the Senate Regulated Industries Committee



April 3, 2017

Chairman Travis Hutson  
Senate Committee on Regulated Industries  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Re: Support for the Protect Florida Small Business Act (SB 750)

Dear Chairman Hutson:

I am writing to you on behalf of members of the North American Association of Subway Franchisees (NAASF) which employs thousands of people in Florida and over 200,000 in the United States; we also spend a significant amount of funds on the restaurants themselves.

We support the Protect Florida Small Business Act because it protects Florida's small business owners by allowing them the freedom to run their franchises. It gives franchisees more protections when renewing, transferring and selling their businesses; the Act also provides added security for franchisees to reinvest and grow their business. Upon termination, the Act requires the franchisor to repurchase the business' inventory, identifying a franchisee's longstanding property rights in his or her business.

Franchisees invest hundreds of thousands of dollars in their businesses. They support the local communities, employ the citizens of the state, and pay taxes in Florida.

NAASF fully supports The Protect Florida Small Business Act and asks that you vote in favor of this important piece of legislation. Thank you for your consideration.

Sincerely,

*Les*

Les White  
Chairman  
NAASF

*David*

David Tennyson  
Past NAASF Chairman  
Florida Franchisee

*Illya*

Illya Berecz  
Executive Director  
NAASF

cc: Members of the Committee on Regulated Industries



## The National The UPS Store Owners Franchise Owners Association

Senate Regulated Industries Committee:

This letter is on behalf of The UPS Store Owners Franchise Owners(TUPSSO) Association. The association represents its member franchisees and its Board of Directors are elected by their fellow franchisees.

In respect to the house bill SB 750, "Protect Florida Small Business Act," we, as the only representative of over 1100 store owners in our franchise model DO stand united with our Florida owners in support of this bill. We believe that this bill will support and protect our franchisees' investment in this franchise.

We have seen nationally that franchisors who are not held to a standard of fairness in relation to the individuals investing in their franchise model will mislead potential buyers, withhold information, and even change the franchisee agreement without notification to benefit themselves.

Someone needs to hold these franchisors accountable. I can speak of at least two store owners in New Jersey who are losing their stores because of corporate changes in our discount structure. They now make less money for the same services they provided 12 months ago and the financial strain is more than their young store can bear. Please help people like these who have lost their life savings because of franchisors unscrupulous actions.

A similar bill has already passed in California, and to the surprise of many, franchisors have not pulled out of the state, nor have they lost substantial revenues. The IFA has begged our Association to stand with them in opposition to this bill and we declined. However, they often seek an individual franchisee with a sympathetic ear that they can use to show support for their ideals, while the majority of store owners disagree with their stance. Please know we support this bill as an Association wholeheartedly.

Eric Chapelle

Vice President The UPS Store Owners Franchise Owners Association.  
Owner of The UPS Store 5445,4396,5225 and 5991

**Testimony of Edwin J. Shanahan, Executive Director  
Dunkin' Donuts Independent Franchise Owners, Inc.**

**And on behalf of the  
Coalition of Franchisee Associations**

**Senate Bill # 750  
The Protect Florida Small Business Act**

**Senate Committee on Regulated Industries**

**April 4, 2017**

Honorable Chairman and Members of the Committee:

Thank you for the opportunity to provide testimony on *Senate Bill # 750, The Protect Florida Small Business Act*. For the record, my name is Ed Shanahan and I am the Executive Director of the Dunkin' Donuts Independent Franchise Owners (DDIFO). I am also testifying today as a representative of the Coalition of Franchisee Associations, the largest **franchisee only** organization in the country. The CFA represents some 18 different franchisee associations – comprising 41,000 franchisees owning more than 86,000 businesses and employing over 1.4 million individuals! DDIFO is the franchisee association for the Dunkin' Donuts franchise system and a founding member of the Coalition of Franchisee Associations. The DDIFO represents several thousand franchised stores across the Dunkin' system, including a few hundred right here in Florida. Both organizations are strongly in support of SB 750 and encourage the committee to endorse its adoption.

Franchising is a great business model, when used properly. As we know, it creates abundant opportunities – primary among them, the opportunity for an entrepreneur to open that business that he/she always dreamed of and it allows them to do so with an established brand - a known quantity. It allows that entrepreneur to open without having to “re-invent the wheel”, if you will – trying to recreate a product that he/she already believes to be superior to others. It allows that entrepreneur to focus on growing their new business and hiring the employees who will work to help make that business successful, and that dream - the American Dream - a reality.

It is the ultimate symbiotic business relationship – the entrepreneur invests his or her own money to buy the land, build the building, equip the franchise, purchase the brand name and employ the workers. The franchise brand grants the name rights, the



necessary operational expertise and the requisite logistical support in exchange for money - an upfront payment and ongoing royalties. In sum, the entrepreneur gets the business he or she wants and the company gets to grow its revenues and expand its corporate presence using **OPM** – other people’s money! In so many ways, it is the very definition of the win – win.

There can be an unfortunate flipside to that promise of opportunity, however, that “win-win” relationship. In the case of a bad concept, or bad franchisor, it is fertile ground for that dream to become a nightmare. In the case of a bad concept, or a bad franchisor, it can unleash a torrent of devastation on that entrepreneur, on his/her family, on his/her life, from which he/she may never recover – it can cost franchisees everything!

When you invest \$10,000 in a security, your risk is that you could lose your \$10,000 investment. However, when you invest in a franchise you risk so much more - you risk your initial investment, business losses, and because you are most often bound by a personal guarantee, you also have all your personal assets, including your family home, at risk. With this much on the line, is it really unreasonable for the state to ensure that predatory franchisors are not allowed to engage in deceptive practices?

Franchising is an industry that is growing - and growing up – in economic strength, financial prowess and corporate presence. Unfortunately, it has grown noticeably in corporate abuse and excess as well. We note that historically, as a new industry gets its footing and a larger share of American business, there is often a corresponding increase in corporate excess and abuse. Franchising is no exception – and a few short years ago under the ownership of a host of private equity firms, Dunkin’ Donuts was the poster boy for that excess and abuse.

With the current executive team at Dunkin' Donuts, the franchisor/franchisee relationship is significantly improved - in fact, most would consider it a good, strong and mutually respectful relationship, but not so for many other franchisees. It is time that the abuses perpetrated on hardworking franchisees - small businessmen and women - be identified and addressed. SB 750 is a thoughtful bill that helps to resolve those inequities and prevent those abuses. It is neither extreme nor radical, but rather a balanced and sensible approach to addressing problems that continue to threaten jobs, investments and economic prosperity across Florida.

Let's consider what this legislation will do.

SB 750 will require that when terminating a franchise agreement – firing the franchise owner, if you will – there be good cause to do so. It requires that a franchisor give a franchisee a reasonable opportunity to correct a problem and cure a default.

As it relates a franchisor's right to allow a franchise agreement to expire, SB 750 keeps that ability intact, but it includes certain limited restrictions on that ability when the decision not to extend is not based upon good cause.

SB 750 affirms the franchisor's control over their brand, but it also asserts that the company cannot prevent a franchisee from selling or transferring his/her business to another **QUALIFIED** entity or individual. Further, it ensures that a businessman or woman can pass their business on to a surviving spouse or an heir so long as certain conditions are met.

Under the provisions of SB 750, the franchisor can still terminate a franchisee who is in violation of the franchise agreement. Should that happen however, SB 750 rightfully

provides that when a franchisee is terminated, he/she is properly and fairly compensated for the inventory, equipment, supplies and furnishings that the franchisor will confiscate, unless the franchisor waives the franchisee's non-compete so the franchisee can use the assets.

And, SB 750 provides that transactions between the franchisor and the franchisee be done in the spirit of good faith and fair dealing!

In the aggregate, the provisions of SB 750 are a sequence of small steps that begin the process of balancing a business relationship that has long been out of balance.

Opponents will likely paint this legislation as unnecessary and overly burdensome on franchisors. But, requiring good cause to terminate a franchisee isn't burdensome to a franchisor – it's a cornerstone of common decency; requiring that a company deal in good faith is not an overly burdensome expectation – it's a principle on which American business has stood for centuries; providing that a terminated franchisee is fairly compensated for his/her inventory, equipment and supplies if he or she cannot use them is not a franchisor's burden, it is the proper disposition of that property; and, mandating that good cause exist in order to terminate a franchise that represents an individual's life's work is not an excessive requirement – it is common decency and a fairness we all should expect.

Before I close, I would like to take a moment to answer a question that is oftentimes asked, "Why don't I hear from franchisees directly about this problem?" The answer is simple: there is significant exposure to them by publicly supporting a bill like this. Franchisees put themselves at risk by speaking out against what their franchisor would want. In this industry, franchisee leaders tend to have a short lifespan if they're too

vocal about their concerns. The intimidation factor is palpable and the pressure to remain quiet is intense.

Members of the committee, the bottom line is this: by supporting SB 750 you are acknowledging the realities of any and every industry – that there must be a certain balance in order for that industry, and all involved in it, to grow, to thrive, to succeed. I respectfully urge you to act favorably on SB 750 and give the franchise industry the direction and the balance it needs to continue to grow and thrive here in the Sunshine State!

I thank you for your time and consideration this afternoon.

# THINK SB 750 PROTECTS FLORIDA'S SMALL BUSINESSES? THINK AGAIN.

*THE BAIT: "SB 750 protects Florida's existing franchise small businesses."*

**REALITY:** SB 750 actually hurts the majority of Florida's franchise small business owners and their customers by putting the brand standards they depend on at risk. If SB 750 takes effect, Florida small business franchise owners will have to contend with uneven quality standards, fewer loyal customers, and shrinking opportunities for new business ventures.

*THE BAIT: "SB 750 will encourage new franchise investment in Florida."*

**REALITY:** SB 750 essentially waters down franchise agreements to the point where they are no longer enforceable. The consequence is that fewer franchises will want to expand into Florida, as there is no guarantee that their best practices and quality standards will be adhered to here.

*THE BAIT: "Most Franchisees support SB 750."*

**REALITY:** This could not be further from the truth. SB 750 is being spearheaded by a small but vocal group of franchisees claiming to represent the interests of the majority. The truth is, the majority of Florida's 47,000 franchise establishment owners see this bill for what it is: a potential job killer.

*THE BAIT: "Franchisees will feel more secure in their investment if SB 750 takes effect."*

**REALITY:** It's just the opposite. SB 750 will make franchise small business owners that play by the rules, honor customer deals, and adhere to quality controls actually feel less secure doing business in Florida. That's because SB 750 puts these owners at a disadvantage to those franchise owners that decide not to comply with their contractual agreements and quality control obligations.

*THE BAIT: "SB 750 will streamline the franchise relationship and make it easier to do business in Florida."*

**REALITY:** This legislation severely hurts the likelihood of success in the franchise model by eliminating consistency in products, hours, deals, quality, and customer service between locations.

**The Bottom Line: SB 750 has the potential to derail a successful economic engine in Florida and could hinder the way franchise small business owners conduct and expand their businesses.**

**Take a stand for Florida franchise small businesses**

**REJECT SB 750.**



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one opportunity at a time.

## **Why Franchisees Should Oppose Florida Senate Bill 750, Franchise Relations Legislation**

Franchise Relationship Bills have been introduced in several state legislatures during the last legislative session. The objective of these bills is to establish grounds, codified in State law, for franchisees to unilaterally change terms and conditions of franchise contracts in prescribed areas-such as product pricing, store hours, vendor purchases, operating standards, territories, renewals and transfers.

While such proposals may appear favorable to franchisees, their enactment will lead to "unintended consequences" that weaken franchisees' equity in their businesses, damage brands, reduce product quality, limit franchisor assistance, increase incentives for litigation and jeopardize constitutionally guaranteed contract rights.

### **SB 750 Will Hurt Small Business Owners**

For franchise small business owners, brand reputation is everything. SB 750's one-size-fits-all regulation damages the brand, hurts our small franchise businesses and could cost Florida jobs. It will also lower the value of our small businesses and put the owner's hard earned equity at risk. This bill could put more small businesses at risk of shutting their doors and severely limit further brand expansion in the state.

### **Florida Law Already Governs Franchised Small Business**

Florida law and the Federal Trade Commission require the franchisor to provide extensive disclosure documents to franchisees before entering into a franchise agreement to help ensure that both parties understand each other's expectations and obligations. Franchise agreements, like any other contractual agreement, should set forth guidelines and expectations that each party reviews, understands and agrees to (or negotiates upon) before mutually signing. These agreements and the standards under which franchise businesses operate are designed to help ensure a uniform and quality experience for our customers. As both franchisees and franchisors, we have invested significant capital and resources in our businesses and pride ourselves on delivering quality goods and services that our customers have come to expect. SB 750 undoes key elements of the existing contracts that protect the brand.

### **SB 750 Creates Litigation on Good Faith & Fair Dealing**

The "good faith" provision would lead to costly litigation, and reduce the ability to settle disputes between the parties out of court. Further, the sweeping liability provisions in SB 750 have the potential to create unlimited damages, not only contract damages, but tort damages that could mean punitive or other damages as well. Under the duty of good faith provision, any kind of claimed violation or minor problem could result in substantial damages for franchise businesses, ultimately harming the brand equity for franchisors and franchisees alike.

### **SB 750 Will Make Terminating Underperforming Operators Difficult**

The bill dramatically changes the burden under which a franchisor can terminate a contract from "good cause" to a "substantial and material breach." "Substantial and material breach is a very high standard for a franchisor to overcome and would allow underperforming operators the ability to continue to operate. This is a dangerous precedent as not only would this damage the reputation of other franchisee business owners, but it would also put at risk the brand at both the local and national levels.

## ECONOMIC IMPACT IN FLORIDA

	in Florida	Nationally
Locations	47K	733K
Jobs	514.0K	7.6M
Payroll	\$17.9B	\$269.9B
Output	\$44.8B	\$674.3B
GDP	\$27.1B	\$404.6B

**78%**

of Florida voters have  
a favorable opinion of  
franchises

## FLORIDA FRANCHISE BUSINESS FORECAST FOR 2017\*

### ESTABLISHMENTS

**48.2K**

+2.4% from 2016

### EMPLOYMENT

**535.1K**

+4.1% from 2016

### PAYROLL

**\$18.4B**

+3% from 2016

### OUTPUT

**\$47.8B**

+6.6% from 2016

\*Data prepared by IHS Markit  
Economics, for the International  
Franchise Association, Franchise  
Education and Research Foundation,  
January, 2017.

## Florida Voters Want Congress and the Administration to Support Locally-Owned Businesses

Which of the following would you prefer?

**73%**



Government policies  
that promote and  
support local  
ownership of stores  
and restaurants.

**9%**



Government policies  
that promote and  
support large  
corporations owning  
and operating local  
stores and  
restaurants.

**18%**



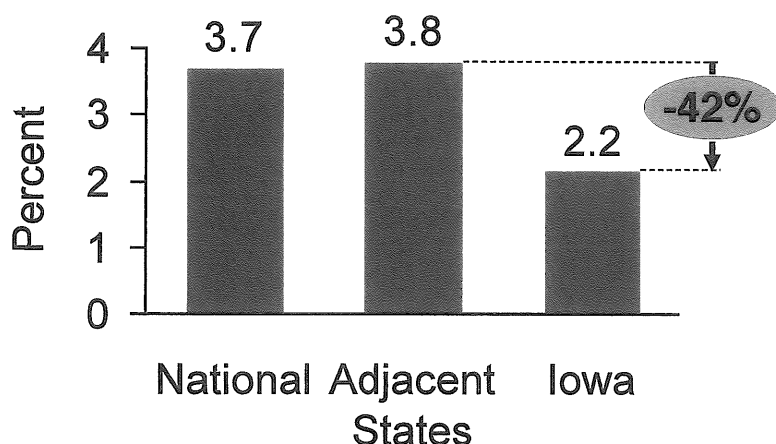
Don't Know / No  
Opinion

# Did The *Iowa Franchise Act* Help Franchises? The Answer is: No.

FRANdata analyzed 74 franchise brands to assess the impact of the Iowa Franchise Act. Here is what they found:

**In the first 4 years, Iowa franchises grew 42% slower than in adjacent states**

## Franchise Unit Growth From 1992-1996

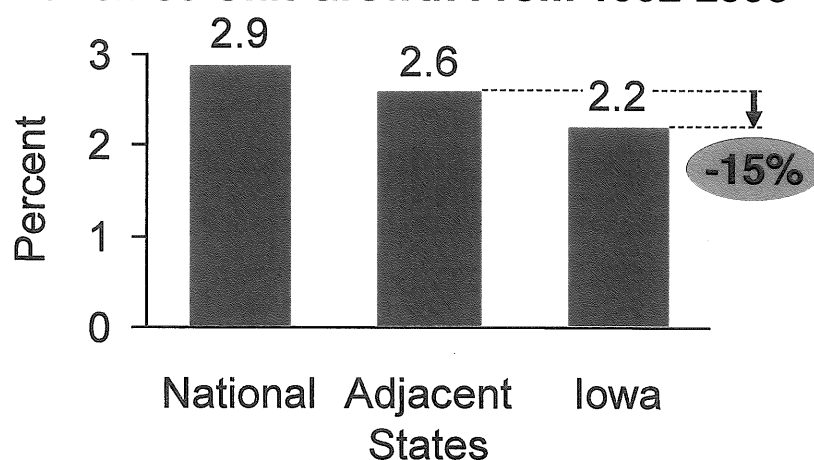


In the first four years, when the impact of the law was greatest, Iowa saw significantly less growth compared to the national average and saw the slowest growth compared to neighboring states.

**The impact of these first 4 years was felt even after 14 years**

FRANdata's analysis of disclosure documents from 74 brands doing business in Iowa and adjacent states, from 1992 to 2006, demonstrates that the Iowa Franchise Act constrained franchise unit growth in the state.

## Franchise Unit Growth From 1992-2006



## Conclusion

Franchises have added jobs faster than other businesses throughout the recovery. States should work to foster a business environment that helps franchises grow, and avoid policies like the Iowa Franchise Act.



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one opportunity at a time.





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one opportunity at a time.

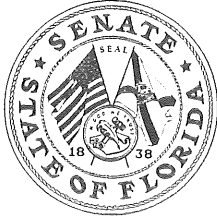
## **OPPOSE SB 750**

1. Most aggressive, over-bearing, and invasive state franchise relationship bill ever introduced
2. Florida never has had a franchise relationship law or seriously considered such a law to be necessary → why now—after years and with no notice—propose such a draconian law that will turn Florida franchising on its head? What statistics and objective criteria support such efforts?
3. Bucks trend of states avoiding passage of excessive regulation → no new, comprehensive franchise-specific relationship laws have been enacted in decades (California only amended an existing, decades old law)
4. Instigated by no more than a few large, sophisticated, multi-unit franchisee conglomerates looking for leverage in their own franchise relationships; those franchisee conglomerates—larger, more successful, and financially stronger than the average franchisor—do not represent the interests of either franchising or the typical “small business” franchisee
5. Unlike most other state franchise relationship laws, which focus principally on termination, non-renewal, and transfer, **SB 750 regulates virtually every material aspect of the privately negotiated franchisor-franchisee relationship**
6. **Additional regulation is not the solution, especially when subject is a voluntary, arms-length, contractual business undertaking between two private parties**
7. Despite putative *prospective* application, SB 750 impairs franchisor’s rights under *existing* franchise agreements and relationships; when franchisors granted original franchise rights that currently are in effect, Florida regulatory landscape impacted franchise structure and informed business decisions looking forward many years. Franchisors that granted limited renewal rights now effectively forced to continue franchise relationship indefinitely because renewing franchise, consistent with existing contractual obligation, would bring relationship within scope of Act and supersede parties’ original contract rights and obligations
8. Materially increases complexity and costs of, and risks inherent in, franchising in Florida; so many new Florida-specific idiosyncratic rules will force franchisors to create separate structures for franchising in Florida (including materially-increased fees) and/or will materially impact operations outside Florida,
9. **Franchisors must seriously consider alternatives to franchising in Florida, including focus on company-owned units and non-franchise distribution, depriving Floridians of new business opportunities, potential job creation, and consumer choice**
10. **Inserts government regulation and overreach into a sophisticated, voluntary, consensual business relationship**
11. SB 750 would create two distinct classes of Floridian franchisees within each franchise system, i.e., existing franchisees not covered by SB 750 and new franchisees covered by SB 750 → creates inherent discriminatory structure and potential internal conflict and disruption among franchisees



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one opportunity at a time.

12. SB 750 grossly tilts playing field against franchisors, whose franchise agreements and operations must protect brand equity for benefit of all franchisees
13. Franchisees already receive full disclosure about material aspects of franchise opportunity and franchise agreement, have ample opportunity to be represented and advised by competent counsel, automatically receive names of other franchisees in system whom they may contact for due diligence, and are positioned to make informed business decision
14. SB 750 weakens a brand's goodwill—to the detriment of franchisors, franchisees, and consumers alike—by limiting franchisor's right to terminate or discontinue relationship with substandard and dishonest operators
15. SB 750 is a godsend to plaintiffs' lawyers, as it creates a statutory remedy and the prospect of material damages and attorneys' fees (and potentially even punitive damages) for almost every franchisor act in a franchise relationship → opens the litigation floodgates



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations, *Chair*  
Commerce and Tourism  
Environmental Preservation and Conservation  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission,  
*Alternating Chair*

**SENATOR JACK LATVALA**

16th District

February 21, 2017

The Honorable Travis Hutson  
314 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Hutson,

I respectfully request you place Senate Bill 750, relating to Franchises, on your Regulated Industries agenda at your earliest convenience.

Should you have any questions or concerns regarding this legislation, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink, reading "Jack Latvala".

Jack Latvala  
Senator, 16<sup>th</sup> District

cc: Ross McSwain, Staff Director

**REPLY TO:**

- ☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- ☐ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SB 822

INTRODUCER: Senator Hutson

SUBJECT: Intrusion and Burglar Alarms

DATE: April 4, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	<b>Favorable</b>
2.			CM	
3.			RC	

---

## **I. Summary:**

SB 822:

- Requires that intrusion/burglar alarms that have central monitoring have a verification call made to “a telephone number associated with the premises” generating the alarm signal, if the first verification call is not answered, prior to contacting law enforcement; and
- Creates an exception to current verification calling requirements to allow central monitoring stations to contact law enforcement agencies without a verification call, for intrusion/burglary alarms installed on premises used for the storage of firearms or ammunition by federally licensed firearms dealers.

Under current law, a verification call is required before alarm monitoring personnel may contact a law enforcement agency for dispatch of law enforcement officers to the premises, and the verification call must be made “to the premises” generating the alarm signal.

SB 822 has no fiscal impact to state government.

The bill provides for an effective date of July 1, 2017.

## **II. Present Situation:**

Chapter 489, F.S., dealing with construction contracting, provides for the regulation of contractors based on the type of contracting engaged in by the contractor. Part I of ch. 489, F.S.

relating to construction contracting, addresses regulation of the construction industry.<sup>1</sup> Part II of ch. 489, F.S., deals with the licensing of electrical and alarm system contractors.<sup>2</sup>

### **Construction Contracting**

The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating the construction industry in this state.<sup>3</sup> The CILB is divided into two divisions with separate jurisdictions:

- Division I is comprised of the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.<sup>4</sup>

The CILB is authorized to:

- Reprimand or place licensees on probation;
- Revoke, suspend, or deny the issuance or renewal of a certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation;
- Impose an administrative fine not to exceed \$10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.<sup>5</sup>

### **Electrical and Alarm System Contracting**

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade, and have been tested on technical and business matters.<sup>6</sup> The Electrical Contractors' Licensing Board (ECLB) in the DBPR implements part II of ch. 489, F.S.<sup>7</sup>

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<sup>1</sup> See ss. 489.101-489.146, F.S.

<sup>2</sup> See ss. 489.501-489.538, F.S. Part III, dealing with registration of septic tank contractors is not relevant to SB 822; see ss. 489.551-489.558, F.S.

<sup>3</sup> See s. 489.107, F.S.

<sup>4</sup> See, for example, Fla. Admin. Code R. 61G4-15.032 (2016), dealing with the various types of pool/spa contractors.

<sup>5</sup> See s. 489.129(1)(a) - (q), F.S., for the acts that may result in the imposition of discipline by the CILB.

<sup>6</sup> See s. 489.501, F.S.

<sup>7</sup> See ss. 489.507 through 489.517, F.S., concerning the powers and duties of the ECLB.

An alarm system is “any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency.”<sup>8</sup> An alarm system includes home-automation equipment, thermostats, and video cameras.<sup>9</sup>

Section 489.505, F.S., specifies the types of contractors that may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace or service alarm systems. An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.<sup>10</sup> The term also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.<sup>11</sup> An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an “alarm system contractor I;” the practice area of an “alarm system contractor II” is identical except that it does not include fire alarm systems.<sup>12</sup>

The DBPR may also issue geographically unlimited certificates of competency to an alarm system contractor (certificateholder).<sup>13</sup> The scope of certification is limited to specific alarm circuits and equipment.<sup>14</sup> No mandatory licensure requirement is created by the availability of a certification.<sup>15</sup>

### **Verification of Intrusion/Burglary Alarm Signals**

All residential or commercial intrusion/burglary alarms that have central monitoring must have a central monitoring verification call made to the premises generating the alarm signal, before alarm monitor personnel may contact a law enforcement agency for dispatch of law enforcement officers to the premises.<sup>16</sup> The central monitoring station must employ call-verification methods for the premises generating the alarm signal if the first call is not answered.<sup>17</sup> Verification calling is not required, however, if the intrusion/burglary alarms have properly operating visual or auditory sensors that enable the monitoring personnel to verify the alarm signal.<sup>18</sup>

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<sup>8</sup> See s. 489.505(1), F.S.

<sup>9</sup> See s. 553.793(1)(b), F.S.

<sup>10</sup> See s. 489.505(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> See s. 489.505(2)(a) and (b), F.S.

<sup>13</sup> See ss. 489.505(4), 489.505(5), and 489.515(1), F.S.

<sup>14</sup> Section 489.505(7), F.S., describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is the abbreviation for “root mean square,” a statistical term defined as the square root of mean square. See <http://www.practicalphysics.org/explaining-rms-voltage-and-current.html> (last visited Mar. 29, 2017).

<sup>15</sup> *Id.*

<sup>16</sup> See s. 489.529, F.S.

<sup>17</sup> *Id.*

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

## Electrical and Alarm Standards

Part IV of ch. 553, F.S., constitutes the Florida Building Codes Act (act). The act provides a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of the Florida Building Code, consisting of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities, and to the enforcement of such requirements.<sup>19</sup> The Florida Building Code is adopted, modified, updated, interpreted, and maintained by the Florida Building Commission.<sup>20</sup>

The current edition of these standards establish minimum electrical and alarm standard requirements in Florida:

- National Electrical Code, NFPA<sup>21</sup> No. 70;
- Underwriters' Laboratories, Inc. (UL), Standards for Safety, Electrical Lighting Fixtures, and Portable Lamps, UL 57 and UL 153;
- Underwriters' Laboratories, Inc., Standard for Electric Signs, UL 48;
- The provisions of the following which prescribe minimum electrical and alarm standards:
  - NFPA No. 56A, Inhalation Anesthetics;
  - NFPA No. 56B, Respiratory Therapy;
  - NFPA No. 56C, Laboratories in Health-related Institutions;
  - NFPA No. 56D, Hyperbaric Facilities;
  - NFPA No. 56F, Nonflammable Medical Gas Systems;
  - NFPA No. 72, National Fire Alarm Code; and
  - NFPA No. 76A, Essential Electrical Systems for Health Care Facilities;
- The rules and regulations of the Department of Health, entitled "Nursing Homes and Related Facilities Licensure"; and
- The minimum standards for grounding of portable electric equipment in Florida Administrative Code Rule Chapter 8C-27, as recommended by the Division of Workers' Compensation in the Department of Financial Services.<sup>22</sup>

## Security Measures for Premises of Federally Licensed Firearms Dealers

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) notes that each year, it receives thousands of reports of theft or loss from federally licensed firearms dealers.<sup>23</sup> The steps that the ATF recommends to protect a firearms business include store design measures, after-

<sup>19</sup> See s. 553.72(1), F.S., which also indicates that effective and reasonable protection for public safety, health, and general welfare at the most reasonable cost to the consumer is also intended.

<sup>20</sup> See s. 553.72(3), F.S.

<sup>21</sup> NFPA is the acronym for the National Fire Protection Association, which is an international nonprofit organization established in 1896. Its mission is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating consensus codes, standards, research, training, and education. NFPA develops, publishes, and disseminates more than 300 consensus codes and standards intended to minimize the possibility and effects of fire and other risks. See <http://www.nfpa.org/about-nfpa> (last visited Mar. 29, 2017).

<sup>22</sup> See s. 553.88, F.S.

<sup>23</sup> See <https://www.atf.gov/firearms/learn-about-firearms-safety-and-security> (last visited Mar. 29, 2017).

hours security methods, reinforcement and narrowing of store door and window openings, alarm systems, and 24-hour video camera recording adequate to capture faces and features.<sup>24</sup>

### **III. Effect of Proposed Changes:**

SB 822 amends s. 489.529, F.S., to require that alarm verification calls made by central monitoring stations to a telephone number associated with the premises generating the alarm signal, if the first call is not answered, before alarm monitor personnel may contact a law enforcement agency for alarm dispatch.

Under current law, the verification call must be made to the premises generating the alarm signal. Verification calling is not required under current law if the intrusion/burglary alarm has properly operating visual or auditory sensors that enable the alarm monitoring personnel to verify the alarm signal.<sup>25</sup>

The bill creates another exception to verification calling to allow central monitoring stations to contact law enforcement, without a verification call, for intrusion/burglary alarms installed on premises used for the storage of firearms or ammunition by a person who holds a valid federal firearms license as a manufacturer, importer, or dealer of firearms or ammunition.

The bill provides for an effective date of July 1, 2017.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>24</sup> *Id.*

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



**B. Private Sector Impact:**

SB 822 provides for improved verification of an alarm signal generated at a residential or commercial premises with a centrally monitored intrusion/burglary alarm and should assist in reducing the number of alarm dispatch calls to law enforcement officers.

Law enforcement response times to premises used for the storage of firearms or ammunition may be reduced due to elimination of the requirement for a central monitoring verification call prior to alarm monitor personnel contacting a law enforcement agency for dispatch to such premises.

**C. Government Sector Impact:**

The bill has no impact to state government. Reductions in false alarm may reduce the costs of responses to intrusion/burglary alarms by local governments and law enforcement agencies.<sup>26</sup>

Reduction of false alarm calls may alleviate the associated burden to law enforcement agencies that must respond to premises generating intrusion/burglary alarms. Allowing verification calling to a telephone number associated with a premises that has a central monitoring alarm system (rather than a call to the premises generating the alarm signal) will reduce false alarms by permitting calls to persons who use cellular telephones and not landlines at the premises, and to third parties authorized to verify the validity of alarm signals generated at the premises.<sup>27</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 489.529 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

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<sup>26</sup> For example, according to a 2014 press release by the City of St. Cloud Police Department: [i]n recent years, false alarms account for approximately 98% of all alarms to which the [St. Cloud Police Department] has had to respond. These false alarms divert law enforcement resources from crimes in progress, other emergency situations and time spent patrolling their beats. See <http://www.stcloud.org/index.aspx?NID=1066> (last visited Mar. 29, 2017).

<sup>27</sup> According to the Pew Research Center, 64% of Americans owned a smartphone in 2015, up from 58% in early 2014. See <http://www.pewinternet.org/2015/04/01/chapter-one-a-portrait-of-smartphone-ownership/> (last visited Mar. 29, 2017).

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Regulated Industries  
**ITEM:** SB 822  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, April 4, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** 110 Senate Office Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

By Senator Hutson

7-01278-17

2017822\_\_

A bill to be entitled  
An act relating to intrusion and burglar alarms;  
amending s. 489.529, F.S.; providing an exclusion from  
the requirement for a verification call prior to alarm  
dispatch for specified premises; providing an  
effective date.

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

Section 1. Section 489.529, Florida Statutes, is amended to  
read:

489.529 Alarm verification calls required.—All residential  
or commercial intrusion/burglary alarms that have central  
monitoring must have a central monitoring verification call made  
to a telephone number associated with the premises generating  
the alarm signal, prior to alarm monitor personnel contacting a  
law enforcement agency for alarm dispatch. The central  
monitoring station must employ call-verification methods for the  
premises generating the alarm signal if the first call is not  
answered. However, ~~if the intrusion/burglary alarms have  
properly operating visual or auditory sensors that enable the  
monitoring personnel to verify the alarm signal,~~ verification  
calling is not required if:

(1) The intrusion/burglary alarm has a properly operating  
visual or auditory sensor that enables the monitoring personnel  
to verify the alarm signal; or

(2) The intrusion/burglary alarm is installed on a premises  
that is used for the storage of firearms or ammunition by a  
person who holds a valid federal firearms license as a  
manufacturer, importer, or dealer of firearms or ammunition.

Section 2. This act shall take effect July 1, 2017.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: CS/SB 830

INTRODUCER: Regulated Industries Committee and Senator Baxley

SUBJECT: Mortgage Brokering

DATE: April 4, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	<b>Fav/CS</b>
2.			BI	
3.			CM	
4.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 830 exempts a securities dealer, investment advisor, or associated person registered under ch. 517, F.S., from regulation as a loan originator or mortgage broker under ch. 494, F.S., if the person in the normal course of conducting securities business with corporate or individual clients:

- Solicits or offers to solicit a mortgage loan from a securities client, or refers a securities client to a an entity exempt from regulation under parts I or II of chapter 494, F.S., pursuant to s. 494.00115, F.S., a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and
- Does not accept or offer to accept a mortgage loan application, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

The bill may have an insignificant, negative fiscal impact to state government. *See* Section V, Fiscal Impact Statement.

The bill provides an effective date of July 1, 2017.

## II. Present Situation:

### State Regulation of Non-Depository Mortgage Business

The Office of Financial Regulation (OFR) within the Department of Financial Services regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.<sup>1</sup> The OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including individuals and businesses engaged in the mortgage business.

Under ch. 494, F.S., the OFR licenses and regulates the following individuals and businesses:

- **Loan originator**, who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes an individual who is required to be licensed as a loan originator under the S.A.F.E. Mortgage Licensing Act of 2008.<sup>2</sup> The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.<sup>3</sup>
- **Mortgage broker**, who conducts loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.<sup>4</sup>
- **Mortgage lender**, who makes a mortgage loan or services a mortgage loan for others, or, for compensation or gain, directly or indirectly, sells or offers to sell a mortgage loan to a noninstitutional investor.<sup>5</sup> A mortgage lender may act as a mortgage broker.<sup>6</sup>

Under ch. 494, F.S., these licensees are subject to:

- Requirements for the maintenance of books and records relating to the licensee's compliance with the chapter, with regard to expenses paid by the licensee on behalf of the borrower, and relating to its advertisements.<sup>7</sup>
- The OFR's investigation and examination authority.<sup>8</sup>
- The OFR's enforcement authority such as injunctions, cease and desist orders, suspension or revocation of licensure, and administrative fines.<sup>9</sup>

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<sup>1</sup> Section 20.121(3)(a)2., F.S.

<sup>2</sup> The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act) (12 U.S.C. s. 5101-5116) was enacted on July 30, 2008, establishes minimum standards for the licensing and registration of state-licensed mortgage loan originators, and mandates a nationwide licensing and registration system for residential mortgage loan originators.

<sup>3</sup> Section 494.001(17), F.S.

<sup>4</sup> Section 494.001(22), F.S.

<sup>5</sup> Section 494.001(23), F.S.

<sup>6</sup> Section 494.0073, F.S.

<sup>7</sup> Sections 494.0016 and 494.00165(2), F.S.

<sup>8</sup> Section 494.0012, F.S.

<sup>9</sup> Sections 494.0013, 494.0014, and 494.00255, F.S.

In order to obtain a license as a mortgage loan originator, an individual must:<sup>10</sup>

- Complete a 20-hour prelicensing class;<sup>11</sup>
- Pass a written test (cost: \$110);<sup>12</sup>
- Submit an application form;
- Submit a nonrefundable application fee of \$215;
- Submit fingerprints, the cost of which is borne by the applicant; and
- Authorize access to his or her credit report, the cost of which is borne by the applicant.

In order to obtain a license as a mortgage broker, a person must:<sup>13</sup>

- Submit an application form, which must designate a qualified principal loan originator;
- Submit a nonrefundable application fee of \$525;
- Submit fingerprints for each of the applicant's control persons,<sup>14</sup> the cost of which is borne by the person subject to the background check; and
- Authorize access to the credit reports of each of the applicant's control persons, the cost of which is borne by the applicant.

In order to obtain licensure as a mortgage lender, a person must:<sup>15</sup>

- Submit an application form, which must designate a qualified principal loan originator;
- Submit a nonrefundable application fee of \$600;
- Submit fingerprints for each of the applicant's control persons, the cost of which is borne by the person subject to the background check;
- Submit a copy of the applicant's financial audit report for the most recent fiscal year, which must document that the applicant has a net worth of at least \$63,000 if the applicant is not seeking a servicing endorsement, or at least \$250,000 if the applicant is seeking a servicing endorsement; and
- Authorize access to the credit reports of each of the applicant's control persons, the cost of which is borne by the applicant.

A mortgage loan originator, broker, and lender license must be annually renewed by December 31.<sup>16</sup> In order to renew:

- A mortgage loan originator license, an individual must submit a renewal form and a nonrefundable renewal fee of \$170; provide documentation of completion of at least 8 hours

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<sup>10</sup> Section 494.00312, F.S.

<sup>11</sup> The cost of prelicensing courses may vary by course provider, but one such course provider charges \$349 for the required 20-hour course. See MortgageEducation.com, Mortgage Loan Originator Courses, <https://www.mortgage-education.com/StatePage.aspx?StateCode=FL> (last visited Mar. 25, 2017).

<sup>12</sup> Nationwide Multistate Licensing System & Registry, Uniform State Test (UST) Implementation Information, <http://mortgage.nationwidelicensingsystem.org/profreq/testing/Pages/UniformStateTest.aspx> (last visited Mar. 25, 2017).

<sup>13</sup> Section 494.00321, F.S.

<sup>14</sup> "Control persons" is defined in s. 494.001(6), F.S., to mean, in part, "an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise."

<sup>15</sup> Section 494.00611, F.S.

<sup>16</sup> Sections 494.00312(7), 494.00321(7), and 494.00611, F.S.

of continuing education courses;<sup>17</sup> and authorize access to his or her credit report, the cost of which is borne by the licensee.<sup>18</sup>

- A mortgage broker license, a person must submit a renewal form and a nonrefundable renewal fee of \$475; submit fingerprints for any new control persons who have not been screened; and authorize access to the credit reports of each of the mortgage broker's control persons, the cost of which is borne by the licensee.<sup>19</sup>
- A mortgage lender license, a person must submit a renewal form and a nonrefundable renewal fee of \$575; submit fingerprints for any new control persons who have not been screened; submit proof that the mortgage lender continues to meet the applicable net worth requirement; and authorize access to the credit reports of each of the mortgage lender's control persons, the cost of which is borne by the licensee.<sup>20</sup>

The following persons are exempt from mortgage broker and mortgage lender regulation under ch. 494, F.S.:<sup>21</sup>

- Any person operating exclusively as a registered loan originator<sup>22</sup> in accordance with the S.A.F.E. Act.
- A depository institution; certain regulated subsidiaries that are owned and controlled by a depository institution; or institutions regulated by the Farm Credit Administration.
- The Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; any agency of the Federal Government; any state, county, or municipal government; or any quasi-governmental agency that acts in such capacity under the specific authority of the laws of any state or the United States.
- An attorney licensed in this state who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client.
- A person involved solely in the extension of credit relating to the purchase of a timeshare plan.
- A person who performs only real estate brokerage activities and is licensed or registered in this state under part I of chapter 475, F.S., unless the person is compensated by a lender, a mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator.

The following persons are exempt from the mortgage lender licensing requirements of ch. 494, F.S.:<sup>23</sup>

- A person acting in a fiduciary capacity conferred by the authority of a court.

<sup>17</sup> The cost of continuing education courses may vary by course provider, but one such course provider charges \$129 for the required 8-hour course. See MortgageEducation.com, Mortgage Loan Originator Courses, <https://www.mortgage-education.com/StatePage.aspx?StateCode=FL> (last visited Mar. 30, 2017).

<sup>18</sup> Section 494.00313, F.S.

<sup>19</sup> Section 494.00322, F.S.

<sup>20</sup> Section 494.00612, F.S.

<sup>21</sup> Section 494.00115(1), F.S.

<sup>22</sup> A "registered loan originator" is "a loan originator who is employed by a depository institution, by a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or by an institution regulated by the Farm Credit Administration, and who is registered with and maintains a unique identifier through the [Nationwide Mortgage Licensing System and Registry]." A registered loan originator must comply with federal registration requirements rather than the loan originator licensing requirements under ch. 494, F.S.

<sup>23</sup> Section 494.00115(2), F.S.



- A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction.
- A person who acts solely under contract and as an agent for federal, state, or municipal agencies for the purpose of servicing mortgage loans.
- A person who makes only nonresidential mortgage loans and sells loans only to institutional investors.
- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.
- An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

### **Federal Securities Regulation**

The federal Securities Exchange Act of 1934 ('34 Act) requires registration of securities market participants like broker-dealers and exchanges.<sup>24</sup> Generally, any person acting as “broker” or “dealer” as defined in the '34 Act must be registered with the Securities and Exchange Commission (SEC) and join a self-regulatory organization (SRO), like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange.

The '34 Act broadly defines “broker” as “any person engaged in the business of effecting transactions in securities for the account of others,” which the SEC has interpreted to include involvement in any of the key aspects of a securities transaction, including solicitation, negotiation, and execution.<sup>25</sup>

A “dealer” is “any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise.”<sup>26</sup>

### **State Securities Regulation**

In addition to federal securities laws, “Blue sky Laws” are state laws designed to protect investors against fraudulent sales practices and activities by requiring companies making offerings of securities to register their offerings before they can be sold in that state and by requiring licensure for brokerage firms, their brokers, and investment adviser representatives.<sup>27</sup>

In Florida, OFR's Division of Securities oversees the Securities and Investor Protection Act, ch. 517, F.S. (SIPA Act), which regulates the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms.

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<sup>24</sup> *Supra*, note 21.

<sup>25</sup> 15 U.S.C. ss. 78c(4) and 78o. U.S. Securities and Exchange Commission, Guide to Broker-Dealer Registration, <https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html> (last visited March 30, 2017).

<sup>26</sup> 15 U.S.C. s. 78c(5).

<sup>27</sup> U.S. Securities and Exchange Commission, Blue Sky Laws, <http://www.sec.gov/answers/bluesky.htm> (last visited March 30, 2017).

The SIPA Act requires the following individuals or businesses to be registered with the OFR under s. 517.12, F.S., in order for such persons to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state:<sup>28</sup>

- **Dealers**, which include:<sup>29</sup>
  - Any person, other than an associated person registered under ch. 517, F.S., who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
  - Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.
- **Investment advisors**, which include:<sup>30</sup>
  - Any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.
  - But does not include a “federal covered advisor.”<sup>31</sup>
- **Associated persons**, with respect to a *dealer or investment adviser*, include:<sup>32</sup>
  - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
  - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
  - Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section.
- **Associated persons**, with respect to a *federal covered adviser*, includes any person who is an investment adviser representative and who has a place of business in this state.

### Wells Fargo Declaratory Statement

In May 2016, Wells Fargo Advisors, LLC (Wells Fargo), filed a petition for a declaratory statement<sup>33</sup> with the OFR to determine whether it would be in compliance with ch. 494, F.S., if it were to start compensating its financial advisors for certain mortgage loan originator activities

<sup>28</sup> Section 517.12(1), F.S.

<sup>29</sup> Section 517.021(6)(a), F.S.

<sup>30</sup> Section 517.021(14)(a), F.S.

<sup>31</sup> Section 517.021(9) and (14)(b)9., F.S. A federal covered advisor must be registered under federal law and must provide a notice-filing to the OFR pursuant to ss. 517.021 and 517.1201, F.S.

<sup>32</sup> Section 517.021(2)(a), F.S.

<sup>33</sup> Pursuant to s. 120.565(1), F.S., “any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.”

that it argued were purely incidental to the otherwise authorized securities and investment activities for Wells Fargo and its financial advisors.<sup>34</sup>

Wells Fargo is a full-service broker-dealer firm subject to supervision by the SEC and the OFR.<sup>35</sup> Wells Fargo is indirectly owned by Wells Fargo & Co., a bank holding company that also owns certain national banks.<sup>36</sup> Therefore, Wells Fargo is affiliated with such banks through common ownership.<sup>37</sup>

Despite the fact that Wells Fargo holds a mortgage broker license and many of its financial advisors hold a mortgage loan originator license, Wells Fargo and its financial advisors do not:

- Solicit the general public for mortgage loans;
- Solicit lenders on behalf of borrowers;
- Take, complete, accept, or assist in preparing applications for any mortgage loans;
- Negotiate the interest rate, terms or conditions for new or existing mortgage loans; or
- Offer any mortgage loans to borrowers.<sup>38</sup>

If Wells Fargo's securities clients raise issues about other financial matters, such as a business need or a residential mortgage, the financial advisors may inform securities clients that the affiliated banks make mortgage loans and may provide bank-approved material.<sup>39</sup>

If a securities client contacts an affiliated bank regarding a mortgage loan and ultimately obtains mortgage financing, Wells Fargo provides "additional compensation" to the financial advisor who interacted with the particular client.<sup>40</sup> Neither Wells Fargo nor the financial advisor, however, receive a fee of any kind from either the securities client obtaining the mortgage loan, or the affiliated bank making the mortgage loan.<sup>41</sup> Wells Fargo and the financial advisor do not have any additional involvement with the affiliated banks' mortgage loan origination process.<sup>42</sup>

The determinative issues in the Declaratory Statement and Final Order issued by the OFR (OFR Declaratory Statement) were: 1) the prohibition against a mortgage broker paying a commission to any person not licensed or exempt from licensure under ch. 494, F.S.;<sup>43</sup> 2) permitting "additional compensation" related to the mortgage loans to be paid to the financial adviser; and 3) the referral aspect of the above set of facts.<sup>44</sup>

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<sup>34</sup> *In Re Petition for Declaratory Statement, Wells Fargo Advisors, LLC*, Case No. 66425, p. 1 & 4-6 (Fla. OFR Aug. 15, 2016).

<sup>35</sup> *Id.* at 2.

<sup>36</sup> *Id.* at 3.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 3 & 5.

<sup>39</sup> *Id.* at 3-4.

<sup>40</sup> *Id.* at 4.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Section 494.0038(2), F.S.

<sup>44</sup> Declaratory Statement and Final Order, *In Re: Petition for Declaratory Statement, Wells Fargo Advisors, LLC*, Case No. 66425 (Fla. OFR Aug. 15, 2016), at pages 7-8.

The OFR Declaratory Statement concluded that both the compensation and the referral require Wells Fargo to be licensed as either a mortgage broker or mortgage lender and require that its financial advisors be licensed as mortgage loan originators.<sup>45</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 494.00115, F.S., to exempt a securities dealer, investment advisor, or associated person registered under ch. 517, F.S., from regulation as a loan originator or mortgage broker under ch. 494, F.S., if the person in the normal course of conducting securities business with corporate or individual clients:

- Solicits or offers to solicit a mortgage loan from a securities client, or refers a securities client to an entity exempt from regulation under parts I or II of chapter 494, F.S., pursuant to s. 494.00115, F.S.,<sup>46</sup> a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and
- Does not accept or offer to accept an application for a mortgage loan, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

The bill provides an effective date of July 1, 2017.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>45</sup> *Id.* at 8 - 9.

<sup>46</sup> Section 494.00115(1)(b), F.S., provides an exemption from regulation as a mortgage broker or loan originator under parts I and II of ch. 494, F.S., for a “depository institution; subsidiaries that are owned and controlled by a depository institution and regulated by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation; or institutions regulated by the Farm Credit Administration.” The Federal Deposit Insurance Act defines a “depository institution” as a bank or saving association. *See* 12 U.S.C. 1813(c).

**B. Private Sector Impact:**

The bill may decrease licensing costs for securities dealers, investment advisors, or associated persons exempted from the license requirements under ch. 494, F.S.

**C. Government Sector Impact:**

The OFR states that the licensure exemption for securities dealers, investment advisors, or associated persons may result in an insignificant loss in revenues.<sup>47</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 494.00115 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Regulated Industries on April 4, 2017:

The committee substitute exempts securities dealers, investment advisors, and associated persons from regulation as a loan originator or mortgage broker if they solicit or offer to solicit, during the normal course of conducting securities business with a corporate or individual client, a mortgage loan from a securities client, or refer a securities client to an entity exempt from regulation under parts I or II of chapter 494, F.S., pursuant to s. 494.00115, F.S., a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>47</sup> See 2017 Agency Legislative Bill Analysis issued by the OFR for SB 830, dated February 15, 2017 (on file with Senate Committee on Regulated Industries) at pages 3-4.

## The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Regulated Industries  
**ITEM:** SB 830  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, April 4, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** 110 Senate Office Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting



591686

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/05/2017	.	
	.	
	.	
	.	

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The Committee on Regulated Industries (Baxley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (2) and (3) of section 494.00115,  
Florida Statutes, are renumbered as subsections (3) and (4),  
respectively, and a new subsection (2) is added to that section,  
to read:

494.00115 Exemptions.—

(2) A securities dealer, an investment adviser, or an



591686

associated person registered under s. 517.12 is exempt from regulation under this part and part II of this chapter if such person, in the normal course of conducting securities business with a corporate or an individual client:

(a) Solicits or offers to solicit a mortgage loan from a securities client or refers a securities client to an entity exempt under paragraph (1)(b), a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and

(b) Does not accept or offer to accept an application for a mortgage loan, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

Section 2. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to mortgage brokering; amending s.

494.00115, F.S.; providing an exemption from

regulation under parts I and II of ch. 494, F.S.,

under certain circumstances, for certain securities

dealers, investment advisers, and associated persons;

providing an effective date.



By Senator Baxley

12-01208A-17

2017830\_\_

1                   A bill to be entitled  
2       An act relating to mortgage brokering; amending s.  
3       494.00115, F.S.; providing an exemption from  
4       regulation under parts I and II of ch. 494, F.S., for  
5       certain securities dealers, investment advisers, and  
6       associated persons; providing an effective date.

8   Be It Enacted by the Legislature of the State of Florida:  
9

10       Section 1. Subsections (1) through (3) of section  
11       494.00115, Florida Statutes, are renumbered as subsections (2)  
12       through (4), respectively, and a new subsection (1) is added to  
13       that section, to read:

14       494.00115 Exemptions.—

15       (1) A securities dealer, an investment adviser, or an  
16       associated person registered under s. 517.12 is exempt from  
17       regulation under this part and part II of this chapter if he or  
18       she is conducting business with corporate or individual clients  
19       in the normal course of securities business and does not  
20       otherwise accept or offer to accept an application for a new  
21       mortgage loan, negotiate or offer to negotiate the terms or  
22       conditions of a new or existing mortgage loan on behalf of a  
23       borrower or lender, or negotiate or offer to negotiate the sale  
24       of an existing mortgage loan to a noninstitutional investor for  
25       compensation or gain.

26       Section 2. This act shall take effect July 1, 2017.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

830  
Bill Number (if applicable) \_\_\_\_\_

Topic Mortgage Broker Exemption

Amendment Barcode (if applicable) \_\_\_\_\_

Name Sean Stafford

Job Title \_\_\_\_\_

Address 115 E Park Ave

Phone 727-5000

Street

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Securities Dealers Assn

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/04/2017

830

*Meeting Date*

*Bill Number (if applicable)*

Topic Mortgage Brokering

*Amendment Barcode (if applicable)*

Name Warren Husband

Job Title \_\_\_\_\_

Address PO Box 10909

Phone (850) 205-9000

*Street*

Tallahassee

FL

32302

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Securities Industry and Financial Markets Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

830

Bill Number (if applicable)

Topic

Mortgage Brokerage Bill

Amendment Barcode (if applicable)

Name

Anthony DiMarco

Job Title

ELC of Govt. Affairs

Address

1001 Thomastown Rd

Phone

229-2265

Street

City

Jallahar

State

Zip

32303

Email

adimarco@floridabankers.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida Bankers Association

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

# THE FLORIDA SENATE

**COMMITTEES:**

Governmental Oversight and Accountability, *Chair*  
Criminal Justice, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Health and  
Human Services  
Transportation

**SELECT COMMITTEE:**

Joint Select Committee on Collective Bargaining

**JOINT COMMITTEE:**

Joint Legislative Auditing Committee

**SENATOR DENNIS BAXLEY**

12th District

February 27, 2017

The Honorable Senator Travis Hutson  
314 Senate Office Building  
Tallahassee, Florida 32399

Dear Chairman Hutson,

I respectfully request you place Senate Bill 830 Mortgage Brokering on your next available agenda.

This bill exempts an investment advisor from having to be licensed as a mortgage broker if he/she advises client to apply for a new/existing mortgage loan.

I appreciate your favorable consideration.

Onward & Upward,

*Dennis K. Baxley*

Dennis Baxley  
Senator, District 12

DKB/dd

cc: Ross McSwain, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SB 1370

INTRODUCER: Senator Perry

SUBJECT: Lottery Games

DATE: April 4, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	<b>Favorable</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 1370 requires that every contract entered into by the Department of the Lottery (department) with a vendor or retailer include a provision that the vendor or retailer must place or print a warning on all lottery tickets that prominently reads: “WARNING: GAMBLING CAN BE ADDICTIVE.”

The bill has no fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill provides for an effective date of July 1, 2017.

**II. Present Situation:**

Section 15 of Article X of the State Constitution (1968) allows lotteries to be operated by the state. Section 24.102(2), F.S., provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The department shall be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the Florida Lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens”<sup>1</sup> for the benefit of public education.<sup>2</sup> The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.<sup>3</sup> Retailers receive commissions of five percent of the ticket price, one percent of the prize value for redeeming winning tickets, and

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<sup>1</sup> See s. 24.104, F.S.

<sup>2</sup> See s. 24.121(2), F.S.

<sup>3</sup> See s. 24.105(17), F.S.

bonus and performance incentive payments.<sup>4</sup> Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.<sup>5</sup>

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.<sup>6</sup> Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. Contracting with a retailer with a felony criminal history is prohibited,<sup>7</sup> and the authority to act as a retailer may not be transferred.<sup>8</sup>

Retailers may not extend credit or lend money to a person to purchase a lottery ticket. The use of a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods) is allowed, if the lottery ticket purchase is part of a purchase transaction for other goods and services that cost \$20 or more.<sup>9</sup>

The department may establish by rule a system to verify and pay winning lottery tickets:<sup>10</sup>

- Any lottery retailer, as well as any department office, may redeem a winning ticket valued at less than \$600.<sup>11</sup> Payments less than \$50 are generally paid by a retailer in cash, depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner.
- Only a department office may redeem a winning ticket valued at \$600 or more.<sup>12</sup> Winning tickets are paid at the claimant's option in a combination of cash, check, or lottery tickets (with a limitation of \$200 payable in cash).

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.<sup>13</sup> Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the drawing or the end of the lottery game in which the prize was won.

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<sup>4</sup> See *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, Report No. 14-06, Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, (January 2014), (hereinafter referred to as *OPPAGA Report 14-06*) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf>, at page 2 (last visited Mar. 30, 2017).

<sup>5</sup> See *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency*, Report No. 15-03, Office of Program Policy Analysis and Gov't Accountability, Florida Legislature (Jan. 2015), (hereinafter referred to as *OPPAGA Report 15-03*) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf>, at page 1, (footnote 3) (last visited Mar. 30, 2017).

<sup>6</sup> See s. 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.

<sup>7</sup> See s. 24.112(3)(c), F.S.

<sup>8</sup> See s. 24.112(4), F.S.

<sup>9</sup> See s. 24.118(1), F.S.

<sup>10</sup> See s. 24.115, F.S., and Fla. Admin. Code R. 53ER15-31 (2015).

<sup>11</sup> The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.

<sup>12</sup> Mega Millions® and Powerball® prizes up to \$1 million may be claimed at any lottery district office. All other prizes greater than \$250,000 must be claimed at lottery headquarters.

<sup>13</sup> See s. 24.115(1)(f), F.S.

The department may adopt rules governing the types of lottery games to be conducted,<sup>14</sup> including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”<sup>15</sup>

The department introduced full service vending machines (FSVMs) in retail stores across the state in November 2013.<sup>16</sup> In its most recent Financial Audit, the department stated 500 FSVMs used in Fiscal Year 2015-2016 reflected an increase in sales of more than \$36 million, more than 14% over the prior fiscal year.<sup>17</sup>

### Scratch-off Games

The department’s legislatively-approved performance standards are reported in its long-range program plan for Fiscal Year 2017-2018.<sup>18</sup> In that plan, the department noted that it set a new all-time sales record in Fiscal Year 2015-2016 with sales reaching \$6.06 billion, exceeding those in the prior year by more than \$479 million and resulting in a transfer of more than \$1.69 billion to the Educational Enhancement Trust Fund.<sup>19</sup> Further, the department indicated that the success of the Florida Lottery was a result of the agency’s continued efforts to expand and revise its roster of games. During Fiscal Year 2015-2016, Scratch-Off sales exceeded \$3 billion for the fourth consecutive year, and broke all-time Scratch-Off sales records for the fifth consecutive year.<sup>20</sup>

Scratch-off games have a finite lifecycle based on the number that are printed and how they sell; at the end of the lifecycle of a game, the department replaces it with more profitable games. Typically, 12 to 15 scratch-off games are closed each calendar quarter. The following criteria are used to determine when to end games:

- There are no remaining top prizes;
- There is no available inventory to order; and
- Factors such as current sales levels, low inventory levels, contract requirements, seasonality, unforeseen circumstances, changing market conditions or print defects.<sup>21</sup>

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<sup>14</sup> See s. 24.105(9)(a), F.S.

<sup>15</sup> Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, Laws of Fla., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense “online lottery tickets, instant lottery tickets, or both,” and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

<sup>16</sup> *OPPAGA Report 14-06*, *supra* note 5, at 2.

<sup>17</sup> See *Financial Audit of the Department of the Lottery, for the Fiscal Year Ended June 30, 2016, and 2015*, Report No. 2017-103, State of Florida Auditor General (January 2015), at page 30 (2017 Financial Audit) at [http://www.myflorida.com/audgen/pages/pdf\\_files/2015-092.pdf](http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf) (last visited Mar. 30, 2017).

<sup>18</sup> See <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14600&DocType=PDF> (last visited Mar. 30, 2017).

<sup>19</sup> *Id.* at pages 3-4.

<sup>20</sup> *Id.* at page 4.

<sup>21</sup> *OPPAGA Report 15-03*, *supra* note 5, at 10.



The department noted that it currently promotes responsible lottery ticket play and directs persons struggling with a gambling problem to contact the 1-888-ADMIT-IT telephone line for assistance.<sup>22</sup>

### **III. Effect of Proposed Changes:**

SB 1370 amends ss. 24.111 and s. 24.112, F.S., concerning vendors and retailers of lottery tickets, to require that every contract entered into by the department with a vendor or retailer include a provision that the vendor or retailer must place or print a warning on all lottery tickets that prominently reads: “WARNING: GAMBLING CAN BE ADDICTIVE.”

The bill provides for an effective date of July 1, 2017.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

SB 1370 requires placement or printing of a required warning on all lottery tickets by vendors and retailers that contract with the department. It is unclear whether vendors, retailers, the department, or a combination of those parties will bear the costs associated with the notice requirement.

#### **C. Government Sector Impact:**

The department indicates that the bill has no fiscal impact on state government.<sup>23</sup>

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<sup>22</sup> See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Florida Lottery) for SB 1370, dated Mar. 7, 2017 on file with Senate Committee on Regulated Industries) at page 2.

<sup>23</sup> *Id.* at page 3.

The department must ensure that all of its contracts with vendors and retailers include the lottery ticket notice requirement and address the handling of any associated cost for the placement or printing of such notice on every lottery ticket.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

SB 1370 requires that all lottery vendors and lottery retailers provide the required warning on lottery tickets. Whether lottery retailers that contract with the department are involved in the production of lottery tickets is unclear. The method of coordinating vendors and retailers to ensure the required warning is placed or printed on lottery tickets is unclear. The effective date in the bill of July 1, 2017 may impact the ability of the department to implement the notice requirement while maintaining a supply of lottery tickets for its retailers to sell to the public.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 24.111 and 24.112.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

**COMMITTEE:** Regulated Industries  
**ITEM:** SB 1370  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, April 4, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** 110 Senate Office Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

By Senator Perry

8-01213-17

20171370\_\_

A bill to be entitled

An act relating to lottery games; amending ss. 24.111 and 24.112, F.S.; requiring contracts entered into between the Department of the Lottery and a vendor or retailer of lottery tickets to include a provision that requires the vendor or retailer place or print a specified warning on all lottery tickets; providing an effective date.

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

Section 1. Subsection (8) is added to section 24.111, Florida Statutes, to read:

24.111 Vendors; disclosure and contract requirements.-

(8) Every contract entered into by the department pursuant to this section shall contain a provision that requires the vendor to place or print a warning on all lottery tickets that prominently reads: "WARNING: GAMBLING CAN BE ADDICTIVE."

Section 2. Subsections (10) through (15) of section 24.112, Florida Statutes, are renumbered as subsections (11) through (16), respectively, and a new subsection (10) is added to that section to read:

24.112 Retailers of lottery tickets; authorization of vending machines to dispense lottery tickets.-

(10) Every contract entered into by the department pursuant to this section shall contain a provision that requires the retailer to place or print a warning on all lottery tickets that prominently reads: "WARNING: GAMBLING CAN BE ADDICTIVE."

Section 3. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

4/4/17

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1370

Bill Number (if applicable)

Topic Lottery Games

Amendment Barcode (if applicable)

Name Bill Burkley

Waive in Support

Job Title President

Address PO Box 341644

Phone 813-264-2977

Street

Tampa

FL

33696

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Ethica & Religious Liberty Commission

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

4/4/17  
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1370  
Bill Number (if applicable)

Topic Lottery Games

Amendment Barcode (if applicable)

Name Amber Kelly

Waive in Support

Job Title Dir. of Policy & Communications

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Phone 850-567-8143

Street

Orlando

City

FL

State

32806

Zip

Email amberk@florida

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Florida Family Action

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: CS/SB 1372

INTRODUCER: Regulated Industries Committee and Senator Perry

SUBJECT: Electrical and Alarm System Contracting

DATE: April 4, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	<b>Fav/CS</b>
2.			CA	
3.			RC	

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1372 authorizes certified electrical contractors and alarm system contractors (certified contractors) to:

- Act as prime contractors on a project when the majority of the contracted work is within the scope of the certified contractor's license; or
- Subcontract to other licensed contractors any contracted work on a project that is outside the scope of the certified contractor's license.

The bill mirrors current law in part I of ch. 489, F.S., which authorizes prime contracting and subcontracting by construction contractors.

The bill has no fiscal impact on state government. *See* Section V. Fiscal Impact Statement.

The bill provides for an effective date of July 1, 2017.

**II. Present Situation:**

**Construction Contracting**

Chapter 489, F.S., dealing with construction contracting, provides for the regulation of contractors based on the type of contracting engaged in by the contractor. Part I of ch. 489, F.S.,

relating to construction contracting, addresses regulation of the construction industry.<sup>1</sup> Part II of ch. 489, F.S., deals with the licensing of electrical and alarm system contractors.<sup>2</sup>

### **Construction Contracting**

The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating the construction industry in this state.<sup>3</sup> The CILB is divided into two divisions with separate jurisdictions:

- Division I is comprised of the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.<sup>4</sup>

The CILB is authorized to:

- Reprimand or place licensees on probation;
- Revoke, suspend, or deny the issuance or renewal of a certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation;
- Impose an administrative fine not to exceed \$10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.<sup>5</sup>

### **Electrical and Alarm System Contracting**

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade, and have been tested on technical and business matters.<sup>6</sup> The Electrical Contractors' Licensing Board (ECLB) in the DBPR implements part II of ch. 489, F.S.<sup>7</sup>

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<sup>1</sup> See ss. 489.101-489.146, F.S.

<sup>2</sup> See ss. 489.501-489.538, F.S. Part III, dealing with registration of septic tank contractors is not relevant to SB 1372; see ss. 489.551-489.558, F.S.

<sup>3</sup> See s. 489.107, F.S.

<sup>4</sup> See, for example, Fla. Admin. Code R. 61G4-15.032 (2016), dealing with the various types of pool/spa contractors.

<sup>5</sup> See s. 489.129(1)(a) - (q), F.S., for the acts that may result in the imposition of discipline by the CILB.

<sup>6</sup> See s. 489.501, F.S.

<sup>7</sup> See ss. 489.507 through 489.517, F.S., concerning the powers and duties of the ECLB.



An alarm system is “any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency.”<sup>8</sup> An alarm system includes home-automation equipment, thermostats, and video cameras.<sup>9</sup>

Section 489.505, F.S., specifies the types of contractors that may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace or service alarm systems. An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.<sup>10</sup> The term also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.<sup>11</sup> An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an “alarm system contractor I,” the practice area of an “alarm system contractor II” is identical except that it does not include fire alarm systems.<sup>12</sup>

The DBPR may also issue geographically unlimited certificates of competency to an alarm system contractor (certificateholder).<sup>13</sup> The scope of certification is limited to specific alarm circuits and equipment.<sup>14</sup> No mandatory licensure requirement is created by the availability of a certification.<sup>15</sup>

### **Authority to Act as Prime Contractor, or to Subcontract Work**

Pursuant to s. 489.113((9)(a), F.S., no provision in part I of ch. 489, F.S., prevents any contractor from acting as a prime contractor<sup>16</sup> where the majority of the work to be performed under the contract is within the scope of his or her license, or from subcontracting to other licensed contractors work that is part of the project.

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<sup>8</sup> See s. 489.505(1), F.S.

<sup>9</sup> See s. 553.793(1)(b), F.S.

<sup>10</sup> See s. 489.505(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> See s. 489.505(2)(a) and (b), F.S.

<sup>13</sup> See ss. 489.505(4), 489.505(5), and 489.515(1), F.S.

<sup>14</sup> Section 489.505(7), F.S., describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is the abbreviation for “root mean square,” a statistical term defined as the square root of mean square. See <http://www.practicalphysics.org/explaining-rms-voltage-and-current.html> (last visited Mar. 29, 2017).

<sup>15</sup> *Id.*

<sup>16</sup> A “prime contractor” is a contractor who has contracted with an owner of a project and has full responsibility for its completion; a prime contractor agrees to perform a complete contract, and may employ (and manage) one or more subcontractors to carry out specific parts of the contract. See <http://www.businessdictionary.com/definition/prime-contractor.html> (last visited Mar. 29, 2017).

### **III. Effect of Proposed Changes:**

CS/SB 1372 amends s. 489.516, F.S., to provide that no provision in part II, ch. 489, dealing with electrical contracting and alarm system contracting, may prevent certified electrical contractors and alarm system contractors (certified contractors) from:

- Acting as prime contractors on a project when the majority of the contracted work is within the scope of the certified contractor's license; or
- Subcontracting to other licensed contractors any contracted work on a project that is outside the scope of the certified contractor's license.

The bill mirrors s. 489.113(9)(a), F.S., under part I of ch. 489, F.S., which is expressly limited to construction contracting under part I of ch. 489, F.S. The DBPR and the CILB have applied s. 489.113(9)(a), F.S. to electrical and alarm system licensees regulated under part II of ch. 489, F.S.<sup>17</sup>

The bill provides for an effective date of July 1, 2017.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

CS/SB 1372 provides clear statutory authority for electrical and alarm system contractors to act as prime contractors and to subcontract work, as currently permitted in accordance with the administrative interpretation by the DBPR and the CILB of the applicability of s. 489.113(9)(a), F.S. to such contractors. The authorization benefits affected electrical and alarm system contractors if they were burdened with higher insurance rates due to the uncertainty created by the administrative interpretation by the DBPR and the CILB.

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<sup>17</sup> See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for HB 227 (identical to SB 1372), dated Feb. 15, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

C. Government Sector Impact:

The DBPR notes that the bill has no fiscal impact on state government.<sup>18</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 489.516 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

CS by Regulated Industries Committee on April 4, 2017:

The committee substitute authorizes electrical and alarm systems contractors to act as prime contractors and subcontractors, consistent with a similar provision in part I of ch. 489, F.S., authorizing such activities by construction contractors.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>18</sup> *Id.* at page 3.

**COMMITTEE:** Regulated Industries  
**ITEM:** SB 1372  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, April 4, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** 110 Senate Office Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting



519914

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/05/2017	.	
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	.	
	.	

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The Committee on Regulated Industries (Perry) recommended the following:

**Senate Amendment**

Delete lines 19 - 23  
and insert:  
or alarm system contractor from acting as a prime contractor  
where the majority of the work to be performed under the  
contract is within the scope of his or her license or from  
subcontracting to other licensed contractors that remaining work  
that is part of the project contracted.

By Senator Perry

8-01433A-17

20171372\_\_

1                   A bill to be entitled  
2       An act relating to electrical and alarm system  
3       contracting; amending s. 489.516, F.S.; specifying  
4       that provisions regulating certified electrical  
5       contractors and certified alarm system contractors do  
6       not prevent such contractors from acting as a prime  
7       contractor or from subcontracting work to other  
8       licensed contractors under certain circumstances;  
9       providing an effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13       Section 1. Present subsection (5) of section 489.516,  
14       Florida Statutes, is renumbered as subsection (6), and a new  
15       subsection (5) is added to that section, to read:

16       489.516 Qualifications to practice; restrictions;  
17       prerequisites.—

18       (5) This part does not prevent any certified electrical  
19       contractor or certified alarm system contractor from acting as a  
20       prime contractor where the majority of the work to be performed  
21       under the contract is within the scope of his or her license or  
22       from subcontracting to other licensed contractors that remaining  
23       work that is part of the contracted project.

24       Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

SB 1372

Bill Number (if applicable)

Topic Electrical Contracting

Amendment Barcode (if applicable)

Name David Shepp

Job Title Lobbyist

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Street

Phone 863 581-4250

Lakeland FL 33802  
City State Zip

Email sheppesstrategy.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Independent Electrical Contractors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: CS/SB 1520

INTRODUCER: Regulated Industries and Senator Latvala

SUBJECT: Condominium Terminations

DATE: April 4, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	<b>Fav/CS</b>
2.			JU	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1520 revises the requirements for the optional termination of a condominium. Current law authorizes the termination of a condominium due to economic waste or impossibility or at the option of the unit owners. In an optional termination, a plan of termination must be approved by 80 percent of the condominium's total voting interests and no more than 10 percent of the total voting interests may reject the plan of termination. The bill:

- Decreases the percentage of voting interests required to veto a plan of termination from 10 percent to five percent of the total voting interests;
- Increases from five years to 10 years the period of time that must pass before a vote on a plan of termination may be held after an existing residential apartment is converted to a condominium.
- Extends the period of time before another vote on a plan of termination after a failed vote from 18 to 24 months;
- Decreases from more than 50 percent of the units to more than 25 percent of the units, the number of units in the condominium requiring disclosure of that ownership in the plan of termination;
- Decreases from 20 percent to 10 percent, the percentage of ownership or control by an entity that constitutes a bulk buyer that must be disclosed in the plan of termination; and
- Clarifies that the condominium termination process applies to all condominiums created under ch. 718, F.S., (Condominium Act).



Current law prohibits a vote on a plan of termination within five years after an existing residential apartment is converted to a condominium. The bill extends that period to 10 years.

Current law requires that only an original purchaser from the developer who votes to reject a plan of termination is entitled to at least 100 percent of the fair market value of the unit as determined by one or more independent appraisers. The bill extends the right to receive 100 percent of fair market value to all unit owners.

The bill also requires the filing of a plan of termination with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation (DBPR) for review after the unit owners have approved the plan of termination. The termination may proceed after the division determines that the plan complies with the procedural requirements for termination of a condominium in s. 718.117, F.S.

The bill appropriates, for the 2017-2018 fiscal year, \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund (trust fund) to the DBPR, and authorizes one full-time equivalent position with an associated salary rate of \$56,791 to implement the provisions in the bill.

The bill provides an effective date of July 1, 2017.

## **II. Present Situation:**

### **Condominiums**

A condominium is a form of ownership of real property comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.<sup>1</sup> A developer creates a condominium or offers condominium units for sale or lease in the ordinary course of business.<sup>2</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>3</sup> A declaration governs the relationship between of the condominium unit owners and the condominium association.<sup>4</sup>

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units and may be amended as provided in the declaration.<sup>5</sup> If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than two-thirds of the unit owners.<sup>6</sup> Condominium associations are administered by a board of administration and can assess costs for common expenses.<sup>7</sup>

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.103(16), F.S.

<sup>3</sup> Section 718.104(2), F.S.

<sup>4</sup> *Woodside Village Condominium Assoc. Inc. v. Jahren*, 806 So. 2d 452, 456 (Fla. 2002).

<sup>5</sup> Sections 718.104(5) and 718.110(1)(a), F.S.

<sup>6</sup> Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

<sup>7</sup> Section 718.103(1) and (4), F.S.

Association property is real and personal property owned or leased, or dedicated by a recorded plat to the association for the use and benefit of its members.<sup>8</sup> Whereas, condominium property is lands, leaseholds, and personal property subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.<sup>9</sup> The common elements are the portions of the condominium property not included in the units.<sup>10</sup>

Voting interests are the voting rights distributed to the association members. In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.<sup>11</sup>

### **Division of Florida Condominiums, Timeshares, and Mobile Homes**

Condominiums and cooperatives are regulated by the division in accordance with chs. 718 and 719, F.S. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control. The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association. After control of the condominium or cooperative is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.<sup>12</sup>

As part of the division's authority to investigate complaints, the division is authorized to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.<sup>13</sup>

### **Termination of a Condominium**

Pursuant to s. 718.117, F.S., termination of a condominium is authorized under two separate conditions:

- Termination due to economic waste or impossibility; and
- Optional termination.

The termination provisions in s. 718.117, F.S., apply to all condominiums in Florida in existence on or after July 1, 2007.<sup>14</sup>

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<sup>8</sup> Section 718.103(3), F.S.

<sup>9</sup> Section 718.103(13), F.S.

<sup>10</sup> Section 718.103(8), F.S.

<sup>11</sup> Section 718.103(30), F.S. Voting rights are distributed pursuant to s. 718.104(4)(j), F.S.

<sup>12</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 718.117(1), F.S.

***Termination Due to Economic Waste or Impossibility***

When the continued operation of a condominium would constitute economic waste or when the ability to continue operating a condominium is made impossible by law or regulation, a plan of termination based on economic waste or impossibility may be approved by the lesser of the lowest percentage of voting interests necessary to amend the declaration or as otherwise provided in the declaration for approval of termination if:

1. The total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs; or
2. It becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.<sup>15</sup>

***Optional Termination***

Section 718.117(3), F.S., provides the process for optional termination of a condominium. Unless the declaration of condominium provides a lower percentage, a condominium may be terminated at any time if a plan of termination is approved by 80 percent of the condominium's total voting interests and no more than 10 percent of the total voting interests reject the termination.<sup>16</sup> If 10 percent or more of the voting interests of a condominium reject a plan of termination, another termination may not be considered for 18 months after the date of rejection.<sup>17</sup>

Condominiums created pursuant to the condominium conversion procedures in part VI of ch. 718, F.S.,<sup>18</sup> may not undertake an optional plan of termination until five years after the conversion into condominium ownership.<sup>19</sup>

Section 718.117(3)(c), F.S., provides the process for termination if at least 80 percent of the total voting interests are owned by a bulk owner. It defines a bulk owner as the single holder of voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, F.S., holding such voting interests.<sup>20</sup>

<sup>15</sup> Section 718.117(2)(a), F.S. However, if the condominium contains timeshare units, a different approval percentage may apply. See ss. 718.117(2)(b) and (c), F.S.

<sup>16</sup> Section 718.117(3), F.S.

<sup>17</sup> Section 718.117(3)(a)2., F.S.

<sup>18</sup> Part VI of ch. 718, F.S., provides the process for the conversion of existing residential apartments into the condominium form of ownership.

<sup>19</sup> Section 718.117(3)(b), F.S.

<sup>20</sup> Section 726.102(8), F.S., defines an "insider" to include: "(a) If the debtor is an individual: 1. A relative of the debtor or of a general partner of the debtor; 2. A partnership in which the debtor is a general partner; 3. A general partner in a partnership described [above]. A corporation of which the debtor is a director, officer, or person in control; (b) If the debtor is a corporation: 1. A director of the debtor; 2. An officer of the debtor; 3. A person in control of the debtor; 4. A partnership in which the debtor is a general partner; 5. A general partner in a partnership described [above]; 6. A relative of a general partner, director, officer, or person in control of the debtor. (c) If the debtor is a partnership: 1. A general partner in the debtor; 2. A relative of a general partner in, a general partner of, or a person in control of the debtor; 3. Another partnership in which the debtor is a general partner; 4. A general partner in a partnership described [above]. 5. A person in control of the debtor. (d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor. (e) A managing agent of the debtor."

If at least 80 percent of the total voting interests are owned by a bulk owner at the time the plan of termination is recorded, the following conditions apply:

- Upon timely request, unit owners must be allowed to retain possession of units and lease their former units for 12 months after the effective date of the termination if the units are offered to the public.<sup>21</sup>
- Any unit owner whose unit was granted a homestead exemption must be paid a relocation payment equal to one percent of the termination proceeds allocated to the unit.<sup>22</sup>
- The relocation must be paid by the single entity or entities owning at least 80 percent of the total voting interests.<sup>23</sup>
- A unit owner who rejects the plan of termination and is an original purchaser from the developer must be paid at least 100 percent of the fair market value of their units as determined by one or more independent appraisers.<sup>24</sup>
- The fair market value of a unit for an owner who is an original purchaser from the developer and who dissented or objected to the plan of termination must be at least the original purchase price paid for the unit.<sup>25</sup>
- The plan of termination must provide the manner by which each first mortgage on a unit will be satisfied in full at the time the plan is implemented.<sup>26</sup>

The plan of termination must make the following disclosures to unit owners in a sworn statement before a plan of termination may be presented for consideration:

- The identity of any person who owns or controls 50 percent or more of the condominium units or, if owned by an artificial entity, the person who owns or controls it and the person who owns or controls 20 percent of the entity that constitutes the bulk owner;
- The units acquired by the bulk owner, the date of acquisition and the price of each unit; and
- The relationship of any board member to the bulk owner.<sup>27</sup>

The unit owners, other than the bulk owner or owners, are entitled to elect at least one-third of the board before approval of any plan of termination.<sup>28</sup>

### ***Number of Condominium Terminations***

The division furnished the number of condominium terminations for the previous five calendar years:<sup>29</sup>

Calendar Year	Total Terminations	Optional Terminations
2012	30	28
2013	37	35
2014	38	37

<sup>21</sup> Section 718.117(3)(c)1., F.S.

<sup>22</sup> Section 718.117(3)(c)2., F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 718.117(3)(c)3., F.S.

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

<sup>26</sup> Section 718.117(3)(c)4., F.S.

<sup>27</sup> Section 718.117(3)(c)5., F.S.

<sup>28</sup> Section 718.117(3)(d), F.S.

<sup>29</sup> Email from Colton Madill, DBPR, March 28, 2017, on file with the Senate Committee on Regulated Industries.

2015	33	33
2016	29	26

### III. Effect of Proposed Changes:

The bill amends s. 720.117(3), F.S. to revise the requirements for the optional termination of a condominium.

#### Legislative Findings

The bill revises the legislative findings in s. 718.117(1), F.S., to provide that it is in the best interest of the state to provide for termination of a condominium to:

- Ensure the continued maintenance, management, and repair of stormwater management systems, conservation areas, and conservation easements.
- Avoid transferring the expense of maintaining the condominium's infrastructure to the general tax bases of the state and local governments.
- Prevent impairing the continued productive use of the property.
- Protect state residents from health and safety hazards created by derelict, damaged, obsolete, or abandoned condominium properties.
- Provide fair treatment and just compensation for individuals and preserve property values and the local property tax base.
- Preserve the state's long history of protecting homestead property.

#### Process for Optional Termination of a Condominium

The bill:

- Decreases the percentage of voting interests required to veto a plan of termination from 10 percent to five percent of the total voting interests.
- Extends the period before another vote on a plan of termination may be held after a failed vote from 18 to 24 months.
- Increases from five years to 10 years the period of time that must pass before a vote on a plan of termination may be held after an existing residential apartment is converted to a condominium.
- Requires that all unit owners (instead of only original purchasers from the developer who reject the plan of termination) must be paid at least 100 percent of the fair market value of the unit as determined by one or more independent appraisers.
- Decreases from more than 50 percent of the units to more than 25 percent of the units, the number of units in the condominium that a person must own to require the disclosure of that ownership in the plan of termination.
- Decreases from 20 percent to 10 percent, the percentage of ownership or control of an entity that constitutes a bulk buyer that must be disclosed in the plan of termination.
- Requires that the plan of termination must include factual circumstances that show that the plan complies with the requirements of s. 718.117, F.S., and that the plan supports the public policies expressed in s. 718.117, F.S.

- Provides that the process in s. 718.117(2), F.S., dealing with termination of a condominium because of economic waste or impossibility, does not apply to an optional termination under subsection (3) of that section.

### **Division Approval**

The bill requires that a plan of termination must be submitted to the division for review after approval of the plan by the unit owners. The division may authorize the termination to proceed after it determines that the plan complies with the procedural requirements of s. 718.117, F.S.

### **Retroactive Application**

The bill creates an undesignated section of law to provide that the amendments in the bill to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, and are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.

### **Appropriation**

For Fiscal Year 2017-2018, the bill appropriates \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the trust fund to the DBPR. The bill also authorizes one full-time equivalent position with an associated salary rate of 56,791 to implement the provisions in the bill.

### **Effective Date**

The bill provides an effective date of July 1, 2017.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. Other Constitutional Issues:**

CS/SB 1520 provides that the amendments to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act. With respect to

existing condominiums the provisions of the bill may implicate constitutional concerns relating to impairment of contract.<sup>30</sup>

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,<sup>31</sup> the Florida Supreme court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated a statute, as an unconstitutional impairment of contract, which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court set forth several factors to be considered in balancing whether a state law has in fact operated as a substantial impairment of a contractual relationship, stating “[t]he severity of the impairment measures the height of the hurdle the state legislation must clear.”<sup>32</sup>

The court stated that if there is minimal alteration of contractual obligations, the inquiry may end at its first stage. Severe impairment pushes the inquiry into a careful examination of the nature and purpose of the state legislation. The factors to be considered are whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary, or whether it is severe, permanent, immediate, and retroactive.<sup>33</sup>

In *Tropicana Condominium Association, Inc. v. Tropical Condominium, L.L.C. (Tropicana Condominium)*,<sup>34</sup> the Third District Court of Appeals held that the 2007 amendments to s. 718.117, F.S., dealing with termination of a condominium, could not be applied retroactively to a condominium in which the declaration of condominium did not contain language that the condominium was governed by Florida’s Condominium Act “as amended from time to time.” The 2007 amendment to s. 718.117, F.S., reduced from 100 percent to 80 percent the vote required to consent to termination of a condominium.<sup>35</sup>

Absent language that a condominium’s declaration was governed by Florida’s Condominium Act “as amended from time to time,” the Condominium Act could not be applied retroactively to a declaration if it impairs contractual obligations. Applying the test in *Pomponio*, the court held that applying the reduced percentage required for termination in s. 718.117, F.S., would “work a sever, permanent, and immediate change” in the unit owners’ safeguards against termination built into their condominium’s declaration.<sup>36</sup>

<sup>30</sup> Article I, s. 10, U.S. Constitution and Art. I, s. 10, Fla. Const.

<sup>31</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

<sup>32</sup> *Pomponio*, 378 So. 2d at 779.

<sup>33</sup> *Id.*

<sup>34</sup> *Tropicana Condominium Association, Inc. v. Tropical Condominium, L.L.C.*, 208 So.3d 755 (Fla. 3<sup>rd</sup> DCA 2016).

<sup>35</sup> Compare, s. 718.117(1), F.S. (2006) and s. 1, ch. 2007-226, Laws of Fla., (the amendment to s. 718.117(3), F.S.).

Additionally, the Tropicana Condominium’s declaration required approval of 100 percent of the unit owners to terminate the condominium. See, *Tropicana, Id.*

<sup>36</sup> *Id.*, quoting *Pomponio*.

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

None.

**B. Private Sector Impact:**

After a plan of termination is approved, a unit owner who voted against the plan of termination and is not an original purchaser from the developer would be entitled under the bill to be paid at least 100 percent of the fair market value of the unit, as determined by one or more independent appraisers.

**C. Government Sector Impact:**

For Fiscal Year 2017-2018, the bill appropriates \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the trust fund to the DBPR. The bill also authorizes one full-time equivalent position with an associated salary rate of 56,791 to implement the provisions in the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 718.117 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Regulated Industries on April 4, 2017:**

The committee substitute:

- Revises the legislative findings in s. 718.117(1), F.S.;
- Retains the requirement in current law that at least 80 percent of the total voting interests must approve the plan of termination.
- Repeals the requirement that a unit owner must have rejected the plan of termination to be compensated for the fair market value of the unit.
- Requires that the plan of termination must include factual circumstances that show that the plan complies with the requirements of s. 718.117, F.S., and that the plan supports the public policies expressed in s. 718.117, F.S.



- Requires that the plan of termination must be submitted to the division for review after the unit owners approve the plan of termination.
- Provides that plan of termination may proceed after the division determines that the plan complies with s. 718.117, F.S.
- Provides that the process in s. 718.117(2), F.S., dealing with termination of a condominium because of economic waste or impossibility, does not apply to the optional termination authorized in subsection (3) of that section.
- Transfers the language in s. 718.117(1), F.S., which provides for its application to all condominiums in Florida in existence on or after July 1, 2007, to a new subsection (21) in s. 718.117, F.S.
- Creates an undesignated section of law to provide that the amendments in the bill to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, and are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.
- Appropriates, for Fiscal Year 2017-2018, \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the trust fund to the DBPR.
- Authorizes one full-time equivalent position at the DBPR with an associated salary rate of 56,791 to implement the provisions in the bill.

B. Amendments:

None.

**COMMITTEE:** Regulated Industries  
**ITEM:** SB 1520  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, April 4, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** 110 Senate Office Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting



403398

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/05/2017	.	
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The Committee on Regulated Industries (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (1) and (3) of section 718.117,  
Florida Statutes, are amended, and subsection (21) is added to  
that section, to read:

718.117 Termination of condominium.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Condominiums are created as authorized by statute and



403398

are subject to covenants that encumber the land and restrict the use of real property.

(b) In some circumstances, the continued enforcement of those covenants that may create economic waste and, areas of disrepair which threaten the safety and welfare of the public, or cause obsolescence of the a condominium property for its intended use and thereby lower property tax values, and the Legislature further finds that it is the public policy of this state to provide by statute a method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property before and after termination.

(c) The Legislature further finds that It is contrary to the public policy of this state to require the continued operation of a condominium when to do so constitutes economic waste or when the ability to do so is made impossible by law or regulation.

(d) It is in the best interest of the state to provide for termination of the covenants of a declaration of condominium in certain circumstances in order to:

1. Ensure the continued maintenance, management, and repair of stormwater management systems, conservation areas, and conservation easements.

2. Avoid transferring the expense of maintaining infrastructure serving the condominium property, including, but not limited to, stormwater systems and conservation areas, to the general tax bases of the state and local governments.

3. Prevent covenants from impairing the continued productive use of the property.



403398

40       4. Protect state residents from health and safety hazards  
41 created by derelict, damaged, obsolete, or abandoned condominium  
42 properties.

43       5. Provide fair treatment and just compensation for  
44 individuals and preserve property values and the local property  
45 tax base.

46       6. Preserve the state's long history of protecting  
47 homestead property and homestead property rights by ensuring  
48 that such protection is extended to homestead property owners in  
49 the context of a termination of the covenants of a declaration  
50 of condominium ~~This section applies to all condominiums in this~~  
51 ~~state in existence on or after July 1, 2007.~~

52       (3) OPTIONAL TERMINATION. ~~Except as provided in subsection~~  
53 ~~(2) or unless the declaration provides for a lower percentage,~~  
54 The condominium form of ownership may be terminated for all or a  
55 portion of the condominium property pursuant to a plan of  
56 termination meeting the requirements of this section and  
57 approved by the division. Before a residential association  
58 submits a plan to the division, the plan must be approved by at  
59 least 80 percent of the total voting interests of the  
60 condominium. However, if 5 10 percent or more of the total  
61 voting interests of the condominium have rejected the plan of  
62 termination by negative vote or by providing written objections,  
63 the plan of termination may not proceed.

64       (a) The termination of the condominium form of ownership is  
65 subject to the following conditions:

66       1. The total voting interests of the condominium must  
67 include all voting interests for the purpose of considering a  
68 plan of termination. A voting interest of the condominium may



403398

not be suspended for any reason when voting on termination pursuant to this subsection.

2. If 5 ~~10~~ percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 24 ~~18~~ months after the date of the rejection.

(b) This subsection does not apply to any condominium created pursuant to part VI of this chapter until 10 ~~5~~ years after the recording of the declaration of condominium, unless there is no objection to the plan of termination.

(c) For purposes of this subsection, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written



403398

request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. For their respective units, all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the termination trustee. ~~For a person an original purchaser from the developer who rejects the plan of termination and~~ whose unit was granted homestead exemption status by the applicable county



403398

property appraiser, or was an owner-occupied operating business, as of the date that the plan of termination is recorded and who is current in payment of both assessments and other monetary obligations to the association ~~and any mortgage encumbering the unit~~ as of the date the plan of termination is recorded, the fair market value ~~for the unit owner rejecting the plan~~ shall be at least the original purchase price paid for the unit. For purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

4. The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit's share of the proceeds of termination under the plan. If the unit owner is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the receipt by the holder of the unit's share of the proceeds of termination under the plan or the outstanding balance of the mortgage, whichever is less, shall be deemed to have satisfied the first mortgage in full.

5. Before a plan of termination is presented to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn





403398

statement:

a. The identity of any person or entity that owns or controls 25 ~~50~~ percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 10 ~~20~~ percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

d. The factual circumstances that show that the plan complies with the requirements of this section and that the plan supports the expressed public policies of this section.

(d) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.

(e) The division shall examine the plan of termination to determine its procedural sufficiency and, within 45 days after receipt of the initial filing, the division shall notify the association by mail of any procedural deficiencies or that the filing is accepted. If the notice is not given within 45 days after the receipt of the filing, the plan of termination is



403398

presumed to be accepted. If the division determines that the  
conditions required by this section have been met and that the  
plan complies with the procedural requirements of this section,  
the division shall authorize the termination, and the  
termination may proceed pursuant to this section.

(f) Subsection (2) does not apply to optional termination  
pursuant to this subsection.

(21) APPLICABILITY.—This section applies to all  
condominiums in this state in existence on or after July 1,  
2007.

Section 2. The amendments made by this act to s. 718.117,  
Florida Statutes, are intended to clarify existing law, are  
remedial in nature and intended to address the rights and  
liabilities of the affected parties, and apply to all  
condominiums created under the Condominium Act.

Section 3. For the 2017-2018 fiscal year, the sums of  
\$85,006 in recurring funds and \$4,046 in nonrecurring funds from  
the Division of Florida Condominiums, Timeshares, and Mobile  
Homes Trust Fund are appropriated to the Department of Business  
and Professional Regulation, and one full-time equivalent  
position with associated salary rate of 56,791 is authorized,  
for the purpose of implementing this act.

Section 4. This act shall take effect July 1, 2017.

===== T I T L E   A M E N D M E N T =====  
And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled



403398

An act relating to termination of a condominium association; amending s. 718.117, F.S.; revising legislative findings; requiring a plan of termination to be approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation and meet specified requirements for a condominium form of ownership to be terminated for all or a portion of the condominium property under certain circumstances; revising voting requirements for the rejection of a plan of termination; increasing the amount of time before a new plan of termination may be considered after a previous rejection under certain conditions; revising the requirements to qualify for payment as a homestead owner; revising and providing notice requirements; requiring the division to examine a plan of termination and provide specified notice within a certain timeframe; providing applicability; specifying that a plan of termination is presumed to be accepted if notice is not provided within the specified timeframe; providing an appropriation and authorizing a position; providing an effective date.

By Senator Latvala

16-01125-17

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1 A bill to be entitled  
2 An act relating to condominium terminations; amending  
3 s. 718.117, F.S.; revising the default procedure for  
4 the optional termination of a condominium; requiring a  
5 plan of termination to be approved by at least 90  
6 percent of the total voting interests of the  
7 condominium; prohibiting a plan of termination from  
8 proceeding if 5 percent or more of the total voting  
9 interests reject the plan; revising the period during  
10 which a subsequent plan of termination is prohibited  
11 from being considered after a rejection; revising  
12 applicability; revising the requirement on who must be  
13 paid fair market value for his or her unit after  
14 rejecting a plan of termination; revising the written  
15 disclosures that are required to be provided before a  
16 plan of termination is presented; providing an  
17 effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:  
20

21 Section 1. Subsection (3) of section 718.117, Florida  
22 Statutes, is amended to read:

23 718.117 Termination of condominium.—

24 (3) OPTIONAL TERMINATION.—Except as provided in subsection  
25 (2) or unless the declaration provides for a lower percentage,  
26 the condominium form of ownership may be terminated for all or a  
27 portion of the condominium property pursuant to a plan of  
28 termination approved by at least 90 ~~80~~ percent of the total  
29 voting interests of the condominium. If 5 ~~10~~ percent or more of

16-01125-17

20171520\_\_

the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections, the plan of termination may not proceed.

(a) The termination of the condominium form of ownership is subject to the following conditions:

1. The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

2. If 5 ~~10~~ percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 24 ~~18~~ months after the date of the rejection.

(b) This subsection does not apply to any condominium created pursuant to part VI of this chapter until 10 ~~5~~ years after the recording of the declaration of condominium, unless there is no objection to the plan of termination.

(c) For purposes of this subsection, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to

16-01125-17

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the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. For their respective units, all unit owners other than

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the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the termination trustee. For a person ~~an original purchaser from the developer~~ who rejects the plan of termination and whose unit was granted homestead exemption status by the applicable county property appraiser, or was an owner-occupied operating business, as of the date that the plan of termination is recorded and who is current in payment of both assessments and other monetary obligations to the association ~~and any mortgage encumbering the unit~~ as of the date the plan of termination is recorded, the fair market value for the unit owner rejecting the plan shall be at least the original purchase price paid for the unit. For purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

4. The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit's share of the proceeds of termination under the plan. If the unit owner is current in payment of both assessments and other monetary obligations to the association and any mortgage

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117 encumbering the unit as of the date the plan of termination is  
118 recorded, the receipt by the holder of the unit's share of the  
119 proceeds of termination under the plan or the outstanding  
120 balance of the mortgage, whichever is less, shall be deemed to  
121 have satisfied the first mortgage in full.

122 5. Before a plan of termination is presented to the unit  
123 owners for consideration pursuant to this paragraph, the plan  
124 must include the following written disclosures in a sworn  
125 statement:

126 a. The identity of any person or entity that owns or  
127 controls 25 ~~50~~ percent or more of the units in the condominium  
128 and, if the units are owned by an artificial entity or entities,  
129 a disclosure of the natural person or persons who, directly or  
130 indirectly, manage or control the entity or entities and the  
131 natural person or persons who, directly or indirectly, own or  
132 control 10 ~~20~~ percent or more of the artificial entity or  
133 entities that constitute the bulk owner.

134 b. The units acquired by any bulk owner, the date each unit  
135 was acquired, and the total amount of compensation paid to each  
136 prior unit owner by the bulk owner, regardless of whether  
137 attributed to the purchase price of the unit.

138 c. The relationship of any board member to the bulk owner  
139 or any person or entity affiliated with the bulk owner subject  
140 to disclosure pursuant to this subparagraph.

141 (d) If the members of the board of administration are  
142 elected by the bulk owner, unit owners other than the bulk owner  
143 may elect at least one-third of the members of the board of  
144 administration before the approval of any plan of termination.

145 Section 2. This act shall take effect July 1, 2017.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: CS/SB 1682

INTRODUCER: Regulated Industries Committee and Senators Garcia and Rodriguez

SUBJECT: Condominiums

DATE: April 4, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	<b>Favorable</b>
2.	Oxamendi	McSwain	RI	<b>Fav/CS</b>
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1682 makes three main categories of changes relating to the regulation and operation of condominium associations. The changes:

- Define and prohibit or restrict activities constituting a conflict of interest which may be detrimental to the unit owners of a condominium.
- Impose criminal penalties for misconduct in the operations of a condominium, such as withholding or altering the records or engaging in fraudulent activities in elections.
- Increase access to records by unit owners.

These changes are substantially based on a final report by a Miami-Dade County grand jury, titled, *Addressing Condo Owners' Pleas for Help: Recommendations for Legislative Action*. The grand jury found that the existing statutes do not sufficiently restrict self-dealing by members of the boards of condominiums or sufficiently deter other forms of misconduct such as election fraud. Additionally, the grand jury found that the existing statutory mechanisms are insufficient to force condominium associations to make their official records available to unit owners in a timely manner.

**II. Present Situation:**

A condominium is a form of ownership of real property which is comprised entirely of units which are accompanied by an undivided share in common elements, such as hallways, staircases,

parking lots, and recreational facilities.<sup>1</sup> An association, which is a nonprofit corporation comprised of the unit owners of the condominium, is responsible for operating the condominium.<sup>2</sup> The board of the condominium is a representative body that is responsible for managing the association.<sup>3</sup>

Condominium associations are self-governing but are regulated to some degree by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation (DBPR). Larger condominium associations may operate with the assistance of a community association management firm or community association manager. Community association management firms and community association managers are also licensed and regulated by the department.<sup>4</sup>

### **Condominium Powers and Duties**

The powers and duties of the association, operated by the board, include the power or duty to:

- Manage the condominium's property.
- Contract, sue, and be sued.
- Make and collect assessments and maintain the common elements of the association.
- Purchase adequate property insurance.
- Obtain liability insurance for its directors and officers.
- Maintain insurance or a fidelity bond for those persons who control or disburse the association's funds.
- Maintain the official records of the association, which include:
  - Minutes of the meetings of the board of administration.
  - The association's insurance policies.
  - Accounting records for the association.
  - Ballots, sign-in sheets, and other papers relating to voting by unit owners.
- Make the official records of the association available to a unit owner within five working days after the receipt of a written request.
- Preparing financial reports and providing them to unit owners.<sup>5</sup>

### **Restrictions on Conflicts of Interest**

Chapter 718, F.S., imposes a number of general restrictions on conflicts of interest by members of the board of a condominium association. The members of the board of the association have a fiduciary relationship to the unit owners.<sup>6</sup> Consistent with this responsibility, officers and directors may not solicit or accept anything of value from a person providing or proposing to provide goods or services to the association. An officer or director who violates the prohibition is subject to a civil penalty.<sup>7</sup>

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.111(1)(a), F.S.

<sup>3</sup> Section 718.103(4), F.S.

<sup>4</sup> See part VIII of ch. 468, F.S.

<sup>5</sup> Section 718.111, F.S.

<sup>6</sup> Section 718.111(1)(a), F.S.

<sup>7</sup> *Id.*

Additionally, officers and directors are required to exercise their duties “in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association.”<sup>8</sup> An officer or director of an association is liable for monetary damages if he or she breaches or fails to perform his or her duties and the breach or failure related to certain violations of criminal law, an improper personal benefit, or certain reckless acts.<sup>9</sup>

The restrictions on conflicts of interest by board members do not prohibit a board member from having a financial interest in a party providing maintenance or management services to the association.<sup>10</sup> In those cases, contracts between the party providing maintenance or services are permissible if the board member’s interest in the party is disclosed in the contract.

Officers and directors of a condominium association are required to comply with s. 617.0832, F.S., dealing with the general standards for directors in not-for-profit corporations. Officers and directors must disclose and seek approval of conflicts of interest related to contracts between the board of a not-for-profit corporation and a member or members of the board. Such a contract is not void or voidable, if:

- The relationship is disclosed to the board or committee that approves or ratifies the contract or transaction by a vote or consent that does not count the interested director or directors;
- The fact of such relationship or interest is disclosed or known to the members of the board or committee entitled to vote on such contract or transaction, if any, and they authorize, approve, or ratify it by vote or written consent; or
- The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the members.

To ratify or approve a conflict of interest, an affirmative vote is required by a majority of the directors on the board who have no relationship or interest in the transaction or contract. The conflict of interest may not be approved or ratified by a single director.<sup>11</sup> However, the presence or vote of such a director, whose conflict of interest has been ratified or approved by the board, may be counted for purposes of determining whether the transaction is approved.<sup>12</sup>

### **Homeowners’ Association Comparison – Conflicts of Interest**

In contrast, contracts between mandatory homeowners’ associations under ch. 720, F.S., and directors or entities in which a director has a financial interest, must comply with conflict of interest procedures outlined in s. 617.0832, F.S., comply with disclosure requirements outlined in s. 617.0832, F.S., be approved by a two-thirds vote of the directors present, and be disclosed at the next regular or special meeting of the members.<sup>13</sup> If any member of a homeowners’ association makes a motion at the next regular or special meeting of the members, the contract may be canceled by a majority vote of the members present. If the contract is canceled, the

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<sup>8</sup> Section 718.111(1)(d), F.S.

<sup>9</sup> *Id.*; s. 617.0834, F.S.

<sup>10</sup> Section 718.3025, F.S.

<sup>11</sup> Section 617.0832, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 720.3033(2), F.S.

association is only liable for the reasonable value of goods and service previously provided and is not liable for any fee or damages connected to the cancellation.<sup>14</sup>

Officers, directors and managers in a homeowners' association may not solicit or accept anything of value from any person providing or offering to provide goods or services to the association. Upon a finding by the board that an officer or director has violated this prohibition, the board must immediately remove the officer or director from office. However, board members may accept food to be consumed at a business meeting with a value of less than \$25 per individual or services or items in connection to trade fairs or education programs.

### **Elections**

Members of the board of an association are generally selected through elections.<sup>15</sup> Candidates for election to the board, however, may not include a member who is delinquent in the payment of any monetary obligation due to the association. Similarly, the association may suspend the voting rights of members who are delinquent in paying any monetary obligation to the association by more than 90 days.<sup>16</sup> Notices of elections must be delivered to each unit owner entitled to vote at least 60 days before the election.<sup>17</sup> The elections must be conducted using secret ballots.<sup>18</sup>

Members of the board may be recalled by an agreement among a majority of the unit owners who are entitled to vote in condominium matters, or a by a vote of the unit owners at a special meeting.<sup>19</sup> A recalled member must turn over association records and other property of the association within five days after he or she is recalled. If the board does not certify the recall of a board member, the board must file a petition for arbitration with the division.<sup>20</sup>

### **Arbitration**

The division is authorized to employ attorneys and certify attorneys who may act as arbitrators to resolve condominium disputes.<sup>21</sup> An attorney who is certified by the division as an arbitrator must be in good standing with The Florida Bar. The disputes that are subject to arbitration may relate to the authority of the board to require or prohibit a unit owner from taking actions relating to his or her unit.<sup>22</sup> Other disputes eligible for arbitration may relate to the failure of the board to properly conduct an election, give adequate notice of meetings and other actions, or allow inspection of the association's books and records. A dispute relating to election irregularities in an election for a member of the board must be handled on an expedited basis.<sup>23</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *See* s. 718.112(2), F.S.

<sup>16</sup> Section 718.303(5), F.S.

<sup>17</sup> Section 718.112(2)(d)4.a., F.S.

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

<sup>19</sup> Section 718.112(2)(j), F.S.

<sup>20</sup> Section 718.112(2)(j)3., F.S.

<sup>21</sup> Section 718.1255(4), F.S.

<sup>22</sup> Section 718.1255(1), F.S.

<sup>23</sup> Section 718.1255(5), F.S.

### **Regulation by the Department of Business and Professional Regulation**

The division has authority to ensure that condominium associations and boards comply with the statutes and rules governing condominiums. This includes the authority to investigate complaints relating to financial issues, elections, and access to records by unit owners.<sup>24</sup>

If the division has reasonable cause to believe that a condominium association, its board, or officer of the board has violated the statutes or rules governing condominiums, the division may initiate enforcement proceedings.<sup>25</sup> These enforcement proceedings may result in letters of censure or warning, cease and desist orders, restitution, declaratory relief, injunctive relief, and civil penalties.

The division is also required to maintain a toll-free number for condominium unit owners.<sup>26</sup> When the division receives a complaint, it generally must conduct its investigation and take action on the complaint within 90 days of receipt.<sup>27</sup> If the division believes that a person has altered, concealed, or destroyed a document that must be maintained by an association for the purpose of impairing its accuracy or availability in an investigation, the division must refer the matter to a local law enforcement agency.<sup>28</sup>

The division also houses a condominium ombudsman whose duties include:

- Acting as a liaison between the division, unit owners, boards of directors, and board members.
- Developing policies and procedures to assist unit owners, boards of directors, board members and community association managers to understand their rights and responsibilities.
- Monitoring and reviewing procedures and disputes concerning condominium election and meetings.
- Appointing an election monitor to attend the annual meeting of unit owners and conduct the election of directors upon a petition by at least 15 percent of the voting interests in the association or six unit owners, whichever is greater.<sup>29</sup>

### **Grand Jury Report—Addressing Condominium Owners’ Pleas for Help: Recommendations for Legislative Action**

The increasing numbers of condominiums in this state, the increasing numbers of problems for people living in them, and the increasing numbers of complaints against the DBPR motivated a Miami-Dade County grand jury to conduct an investigation of complaints by condominium

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<sup>24</sup> Section 718.501(1), F.S.

<sup>25</sup> Section 718.501(1)(d), F.S.

<sup>26</sup> Section 718.501(1)(k), F.S.

<sup>27</sup> Section 718.501(1)(m), F.S.

<sup>28</sup> Section 718.501(1)(n), F.S.

<sup>29</sup> Section 718.5012, F.S.

residents and the DBPR's responses to their complaints.<sup>30,31</sup> The grand jury's report contains several findings and recommendations, including:

- The statutes governing unit owner access to records are ineffective because the financial penalties for the denial of access to records may be paid from assessments levied against the unit owners, not by the person who wrongfully withheld access to records.<sup>32</sup>
- The statutes should not allow a member of a board of a condominium to vote for or against awarding a contract that involves the board member, a relative of the board member, or any person or entity who has a relationship with that board member or the board member's relative.<sup>33</sup>
- Investigators with the department have little experience or training and seem more intent of closing complaints than resolving them.<sup>34</sup>
- Some associations delay notifying unit owners of delinquent assessments that disqualify them from voting in elections in order to impede those unit owners from becoming current in their financial obligations before the election.<sup>35</sup>
- There are many complaints about fraud in condominium elections, and the statutes should be revised to provide criminal punishments for those who engage in fraudulent activities in condominium elections.<sup>36</sup>
- Election monitors should have the authority to collect evidence and void a condominium election when they reasonably believe that fraudulent election activities have occurred.<sup>37</sup>
- The broad scope of the department's responsibilities may be the cause of its ineffective regulation of condominiums, and if placed elsewhere, the department's investigative arm should employ trained and experienced investigators who have the authority to conduct criminal investigations and to initiate investigations based on their own observations.<sup>38</sup>

### III. Effect of Proposed Changes:

This bill makes three main categories of changes relating to the regulation and operation of condominium associations. The changes:

- Define and prohibit or restrict activities constituting a conflict of interest.
- Impose criminal penalties for misconduct in the operations of a condominium.
- Increase access to records by unit owners.

The bill also addresses a number of other issues pertaining to condominiums.

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<sup>30</sup> FINAL REPORT OF THE MIAMI-DADE COUNTY GRAND JURY, ADDRESSING CONDO OWNERS' PLEAS FOR HELP: RECOMMENDATIONS FOR LEGISLATIVE ACTION (Feb. 6, 2017), <http://www.miamisao.com/wp-content/uploads/2017/02/Grand-Jury-Report-Final.pdf>.

<sup>31</sup> In addition to issuing criminal indictments, grand juries "consider the actions of public bodies and officials in the use of public funds and report or present findings and recommendations as to practices, procedures, incompetency, inefficiency, mistakes and misconduct involving public offices and public monies." *Miami Herald Pub. Co. v. Marko*, 352 So. 2d 518, 522 (Fla. 1977).

<sup>32</sup> FINAL REPORT OF THE MIAMI-DADE COUNTY GRAND JURY, *supra* note 24 at 8-9.

<sup>33</sup> *Id.* at 9-10.

<sup>34</sup> *Id.* at 19.

<sup>35</sup> *Id.* at 21.

<sup>36</sup> *Id.* at 20-22.

<sup>37</sup> *Id.* 24-26.

<sup>38</sup> *Id.* at 27.

**Conflicts of Interest (Sections 1, 2, 5, & 6)**

The bill prohibits conflicts of interest among those who are responsible for operating a condominium as follows:

- Attorneys are prohibited from representing both the board of a condominium association and the management company of the association.
- Members of the board or the management company for a condominium association that is not a timeshare condominium are prohibited from purchasing a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or from taking title to the unit by deed in lieu of foreclosure.
- Condominium associations that are not timeshare condominiums are prohibited from contracting with a service provider that is owned or operated by a board member or a person who has a financial relationship with a board member.

The bill also prohibits a party that contracts to provide maintenance or management services or a board member of the party from owning more than 50 percent of the units of the condominium or from purchasing a property that is subject to a lien by the association. This prohibition does not apply to a condominium association that is a timeshare condominium and to associations in which the non-developer unit owners are not entitled to elect a majority of the board.

Additionally, officers and directors of a condominium board are required to disclose activities that may reasonably be construed to be a conflict of interest. The existence of the conflict of interest must be documented on contracts and meeting agendas. In some cases, the officer or director engaged in a conflict of interest must choose to no longer pursue the activity creating the conflict or withdraw from office. Otherwise, the board must remove the officer or director from office.

In other cases, where the potential for a conflict of interest exists, the person responsible for creating the potential conflict may not be present during the board's deliberations or vote on the matter. The board must disclose to the unit owners that there is a potential conflict of interest. Additionally, a contract between a director, officer, or relative of either and the association which is not properly noticed to the unit owners is void.

**Criminal Penalties (Sections 1 & 4)**

The bill authorizes criminal penalties for several types of misconduct relating to condominiums. A person is subject to criminal penalties as follows:

- A director or board member who knowingly, willfully, and repeatedly fails to provide access to the official records of the association commits a second degree misdemeanor.<sup>39</sup>

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<sup>39</sup> Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

- A person who knowingly and intentionally defaces or destroys association accounting records or fails to create or maintain required accounting records with the intent of harming the association commits a first degree misdemeanor.<sup>40</sup>
- A person who willfully and knowingly refuses to produce association records with the intent of facilitating the commission of a crime or avoiding or escaping detection, arrest, trial, or punishments commits a third degree felony.<sup>41</sup>
- A person who willfully, knowingly, and falsely swears or affirms an oath or affirmation or procures another person to do the same in connection with voting in an association election commits a third degree felony.
- A person who willfully and knowingly perpetrates or attempts to perpetrate fraud in connection with voting in an association election commits a third degree felony.
- A person who willfully, knowingly, and fraudulently changes or attempts to change a vote or ballot cast or to be cast in an association election commits a felony of the third degree.
- A person shall also be punished as if he or she committed the violation if the person willfully and knowingly aides or advises another person to commit a violation, agrees or conspires to commit a violation, or advises another person how to escape detection, trial, or punishment.

### **Access to Association Records (Sections 1 & 9)**

The bill requires condominium associations to keep additional records and generally to take actions to make those records available to unit owners as follows:

- A condominium association must maintain bids for materials, equipment, and services as part of its official records.
- A condominium association must permit renters to inspect and copy the association's bylaws and rules.
- A condominium association must provide an annual report to the Department of Business and Professional Regulation listing the financial institutions at which it maintains accounts, and unit owners may obtain the report from the department.
- A unit owner may give notice to the Division of Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation that an association has failed to mail or hand deliver to the unit owner a copy of the most recent financial statement after a request. The division must then give the association notice that it must comply with the request. If the association fails to comply with that request within five business days, the association may not waive the financial reporting requirement.<sup>42</sup>

Additionally, by October 1, 2017, condominium associations having 500 or more units must post copies of certain types of its official records on its website. However, the records must be inaccessible to the general public. The records that must be posted on the website include:

- The declaration of condominium and related amendments.

<sup>40</sup> Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

<sup>41</sup> Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>42</sup> Section 718.111(13), F.S., requires the association to prepare an annual financial statement. The required type of financial statement is based upon the association's total annual revenue. An association may waive the requirement and prepare a less extensive statement, but may not waive the required statement for more than three consecutive years.



- The bylaws.
- Articles of incorporation of the association and related amendments filed with the Department of State.
- The rules of the association.
- Management agreements, leases, and other contracts to which the association is a party.
- The annual budget for the association.
- Documents to considered and voted on during a meeting and any documents listed on a meeting agenda.
- The annual financial report for the association.
- Certifications by directors relating to conflicts of interest.
- Contracts and transactions between the association and other entities in which a director has a financial interest.
- Notices of board meetings and agendas for those meetings.

### **Miscellaneous Changes (Sections 1, 2, 3, & 7)**

Finally, the bill includes a number of changes to the laws governing condominiums that:

- Require an association to timely provide copies of financial reports to unit owners or lose the authority to waive heightened financial reporting requirements.
- Prohibit member of a condominium board from serving more than four consecutive 2-year terms unless approved by a two-thirds vote of the total voting interests of the association.
- Eliminate the authority of a condominium board to certify the recall of a board member.
- Extend the time period for a recalled board member to turn over records and other association property to 10 days from 5 days after the recall.
- Specify minimum qualifications for arbitrators who are certified by the Division of Florida Condominiums, Timeshares and Mobile Homes to arbitrate a condominium dispute.
- Require arbitrators to conduct a hearing within 30 days after being assigned or entering a contract for the arbitration unless the arbitration petition is withdrawn or a continuance is granted for good cause.
- Require arbitrators who arbitrate condominium disputes to render decisions within 30 days after a hearing.
- Provide that failing to render a written decision within 30 days after a hearing may result in the cancellation of the arbitrator's certification.<sup>43</sup>
- Prohibit a condominium from suspending the voting rights of a unit owner unless the unit owner owes more than \$1,000 to the association.
- Require that proof of nonpayment of a monetary obligation must be provided to the unit owner 30 days before the unit's owners membership rights are suspended because of the nonpayment.<sup>44</sup>
- Prohibit a receiver from exercising the voting rights of a unit that is in receivership for the benefit of the association.

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<sup>43</sup> Section 44.106, F.S., provides that the Florida Supreme Court establishes the minimum standards and procedures for qualifications, certification, professional conduct, and discipline of arbitrators.

<sup>44</sup> Section 718.303(6), F.S., requires that the unit owner's suspension must be approved at a properly noticed meeting of the board. A nonemergency meeting of the board requires a 14-day notice pursuant to s. 718.112(2)(c), F.S.

- Authorize the ombudsman to review secret ballots cast in the vote of an association where there is reasonable cause to believe that election misconduct has occurred.

**Effective Date**

The bill takes effect July 1, 2017.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The provisions of the bill that define and restrict conflicts of interests may result in lower costs for contracted services to condominiums.

Condominiums may incur increased costs to maintain and make their records available to unit owners.

**C. Government Sector Impact:**

The state will incur costs to investigate, prosecute, and punish persons who violate the new criminal standards in the bill.

The minimum qualifications for arbitrators who may arbitrate condominium disputes as set forth in the bill may reduce the pool of qualified arbitrators. This may result in greater costs to the Department of Business and Professional Regulation to employ these arbitrators.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

CS/SB 1682 creates s. 718.111(13)(e), F.S., to provide that a unit owner may give notice to the Division of Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation that an association has failed to mail or hand deliver to the unit owner a copy of the most recent financial statement after a request. The division must then give the association notice that it must comply with the request. If the association fails to comply with that request within five business days, the association may not waive the financial reporting requirement.

SB 294 by Senator Bracy amends s. 718.111(13), F.S., to provide that an association that fails to give the unit owner with a copy of the prior year's financial statement, after receipt of a written request, must provide the division with a copy of the required financial statement for the next three consecutive years, and is also prohibited from waiving the reporting requirement during those years.

The provision in SB 294 differs from the provision in this bill. SB 294 does not require the division to give notice to the association that it must comply with the unit owner's request and does not require that the association comply with the request within five days before the association is prohibited from waiving the required financial statement for failing to comply with the request.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.112, 718.1255, 718.3025, 718.303, 718.5012, and 718.71.

This bill creates the following sections of the Florida Statutes: 718.129 and 718.3027.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on April 4, 2017:**

The committee substitute:

- Permits a renter to inspect and copy only the association's bylaws and rules.
- Removes the provision that requires a condominium association to make its records available to renters and authorized representatives of unit owners and renters.
- Extends until October 1, 2017, the requirement in the bill that an association with 500 or more units must maintain a website to provide members access to the information specified in the bill.
- Provides that the copy of the Articles of incorporation of the association posted on the website of an association 500 or more units must be the copy filed with the Department of State.
- Removes the requirement that an association with 500 or more units must provide a copy of its proposed annual budget and proposed financial report on its website.

- Requires associations with 500 or more units to post on their website documents to be voted on at a board meeting and a notice of any board meeting.
- Exempts timeshare condominiums from the prohibitions in the bill against:
  - A board member, manager, or management company purchasing a unit in a foreclosure sale resulting from unpaid assessments;
  - Employing or contracting with a service provider owned or operated by a board member or any person who has a financial relationship with a board member; and
  - A person contracting to provide management services purchasing a unit in a foreclosure sale resulting from unpaid assessments.
- Limits to non-developer controlled residential condominium associations the prohibition against a person contracted to provide management services purchasing a unit in a foreclosure sale or owning more than 50 percent of the units of the condominium.

B. Amendments:

None.

## The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Regulated Industries  
**ITEM:** SB 1682  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, April 4, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** 110 Senate Office Building

FINAL VOTE			4/04/2017 Amendment 636490 <sup>1</sup>					
Yea	Nay	SENATORS	Garcia Yea	Nay	Yea	Nay	Yea	Nay
X		Benacquisto						
X		Bracy						
	X	Brandes						
X		Braynon						
X		Gibson						
X		Perry						
	X	Steube						
X		Thurston						
X		Young						
		Hukill, VICE CHAIR						
X		Hutson, CHAIR						
8	2	TOTALS	RCS	-				
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting



636490

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2017	.	
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The Committee on Regulated Industries (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (3) and (9), paragraphs (a) and (c)  
of subsection (12), and subsection (13) of section 718.111,  
Florida Statutes, are amended, and paragraph (g) is added to  
subsection (12) of that section, to read:

718.111 The association.—

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT,



636490

11 SUE, AND BE SUED; CONFLICT OF INTEREST.—

12       (a) The association may contract, sue, or be sued with  
13 respect to the exercise or nonexercise of its powers. For these  
14 purposes, the powers of the association include, but are not  
15 limited to, the maintenance, management, and operation of the  
16 condominium property. After control of the association is  
17 obtained by unit owners other than the developer, the  
18 association may institute, maintain, settle, or appeal actions  
19 or hearings in its name on behalf of all unit owners concerning  
20 matters of common interest to most or all unit owners,  
21 including, but not limited to, the common elements; the roof and  
22 structural components of a building or other improvements;  
23 mechanical, electrical, and plumbing elements serving an  
24 improvement or a building; representations of the developer  
25 pertaining to any existing or proposed commonly used facilities;  
26 and protesting ad valorem taxes on commonly used facilities and  
27 on units; and may defend actions in eminent domain or bring  
28 inverse condemnation actions. If the association has the  
29 authority to maintain a class action, the association may be  
30 joined in an action as representative of that class with  
31 reference to litigation and disputes involving the matters for  
32 which the association could bring a class action. Nothing herein  
33 limits any statutory or common-law right of any individual unit  
34 owner or class of unit owners to bring any action without  
35 participation by the association which may otherwise be  
36 available.

37       (b) An association may not hire an attorney that represents  
38 the management company of the association.

39       (9) PURCHASE OF UNITS.—The association has the power,



636490

unless prohibited by the declaration, articles of incorporation, or bylaws of the association, to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them. There shall be no limitation on the association's right to purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments, or to take title by deed in lieu of foreclosure. However, except for a timeshare condominium, a board member, manager, or management company may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.

(12) OFFICIAL RECORDS.—

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

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

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

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

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

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

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners, which minutes must be retained for at least 7 years.





636490

69           7. A current roster of all unit owners and their mailing  
70 addresses, unit identifications, voting certifications, and, if  
71 known, telephone numbers. The association shall also maintain  
72 the electronic mailing addresses and facsimile numbers of unit  
73 owners consenting to receive notice by electronic transmission.  
74 The electronic mailing addresses and facsimile numbers are not  
75 accessible to unit owners if consent to receive notice by  
76 electronic transmission is not provided in accordance with sub-  
77 subparagraph (c)5.e. subparagraph (c)5. However, the association  
78 is not liable for an inadvertent disclosure of the electronic  
79 mail address or facsimile number for receiving electronic  
80 transmission of notices.

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

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

87           10. Bills of sale or transfer for all property owned by the  
88 association.

89           11. Accounting records for the association and separate  
90 accounting records for each condominium that the association  
91 operates. All accounting records must be maintained for at least  
92 7 years. Any person who knowingly or intentionally defaces or  
93 destroys such records, or who knowingly or intentionally fails  
94 to create or maintain such records, with the intent of causing  
95 harm to the association or one or more of its members, is  
96 personally subject to a civil penalty pursuant to s.  
97 718.501(1)(d). The accounting records must include, but are not



636490

limited to:

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

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

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

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

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

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

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

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

17. Bids for materials, equipment, or services.

(c)1. The official records of the association are open to inspection by any association member or the authorized



636490

representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules.

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

2. Any director or member of the board or association who knowingly, willfully, and repeatedly violates subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subparagraph, the term "repeatedly violates" means more than two violations within a 12-month period.

3. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are



636490

required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

4. Any person who willfully and knowingly refuses to release or otherwise produce association records with the intent of facilitating the commission of a crime or avoiding or escaping detection, arrest, trial, or punishment for a crime commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 ~~is personally subject to a civil penalty pursuant to s. 718.501(1)(d).~~

5. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for



636490

the use of a portable device. Notwithstanding this paragraph,  
the following records are not accessible to unit owners:

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

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

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

~~d.4.~~ Medical records of unit owners.

~~e.5.~~ Social security numbers, driver license numbers,  
credit card numbers, e-mail addresses, telephone numbers,  
facsimile numbers, emergency contact information, addresses of a  
unit owner other than as provided to fulfill the association's  
notice requirements, and other personal identifying information



636490

of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph ~~subparagraph~~, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph ~~subparagraph~~. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph ~~subparagraph~~ if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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

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

(g)1. By October 1, 2017, an association with 500 or more units which does not manage timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website.

a. The association's website must be:

(I) An independent website or web portal wholly owned and



636490

operated by the association; or

(II) A website or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, or collection of subpages or web portals dedicated to the association's activities and on which required notices, records, and documents may be posted by the association.

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

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

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

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

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

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



636490

d. The rules of the association.

e. Any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility. Summaries of bids for materials, equipment, or services must be maintained on the website for 1 year.

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

g. The financial report required by subsection (13) and any proposed financial report to be considered at a meeting.

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

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

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2) and 718.3026(3).

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





636490

information within the document will be considered.

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

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

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after ~~upon~~ receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by



636490

all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association.

Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.

(b) 1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a



636490

report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).

3. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;



636490

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.

(e) If the division determines that an association has not



636490

417 mailed or hand delivered to the unit owner a copy of the most  
418 recent financial report within 5 business days after receipt of  
419 a written request from the unit owner, the unit owner may give  
420 notice to the division of the association's failure to comply.  
421 Upon notification, the division shall give notice to the  
422 association that the association must mail or hand deliver the  
423 copy of the most recent financial report to the unit owner and  
424 the division within 5 business days after such notice. Any  
425 association that fails to comply with the division's request may  
426 not waive the financial reporting requirement provided in  
427 paragraph (d). A financial report received by the division  
428 pursuant to this paragraph shall be maintained, and the division  
429 shall provide a copy of such report to an association member  
430 upon his or her request.

431 Section 2. Paragraphs (d) and (j) of subsection (2) of  
432 section 718.112, Florida Statutes, are amended, and paragraph  
433 (p) is added to that subsection, to read:

434 718.112 Bylaws.—

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

438 (d) *Unit owner meetings.*—

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

445 2. Unless the bylaws provide otherwise, a vacancy on the



636490

board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. ~~If the bylaws or articles of incorporation permit terms of no more than 2 years, the association~~ Board members may serve 2-year terms if permitted by the bylaws or articles of incorporation. A board member may not serve more than four consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the association. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests,



636490

coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or



636490

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





636490

association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

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

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



636490

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

b. Within 90 days after being elected or appointed to the



636490

board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.



636490

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

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

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

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

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

646           9. Unless otherwise provided in the bylaws, any vacancy  
647 occurring on the board before the expiration of a term may be  
648 filled by the affirmative vote of the majority of the remaining



636490

649 directors, even if the remaining directors constitute less than  
650 a quorum, or by the sole remaining director. In the alternative,  
651 a board may hold an election to fill the vacancy, in which case  
652 the election procedures must conform to sub-subparagraph 4.a.  
653 unless the association governs 10 units or fewer and has opted  
654 out of the statutory election process, in which case the bylaws  
655 of the association control. Unless otherwise provided in the  
656 bylaws, a board member appointed or elected under this section  
657 shall fill the vacancy for the unexpired term of the seat being  
658 filled. Filling vacancies created by recall is governed by  
659 paragraph (j) and rules adopted by the division.

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

666  
667 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an  
668 association of 10 or fewer units may, by affirmative vote of a  
669 majority of the total voting interests, provide for different  
670 voting and election procedures in its bylaws, which may be by a  
671 proxy specifically delineating the different voting and election  
672 procedures. The different voting and election procedures may  
673 provide for elections to be conducted by limited or general  
674 proxy.

675       (j) *Recall of board members.*—Subject to s. 718.301, any  
676 member of the board of administration may be recalled and  
677 removed from office with or without cause by the vote or



636490

agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. ~~At the meeting, the board shall either certify the recall, in which case~~ Such member or members shall be recalled effective immediately and shall turn over to the board within 10 ~~5~~ full business days after the vote any and all records and property of the association in their possession, ~~or shall proceed as set forth in subparagraph 3.~~

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. ~~At the meeting, the board shall either certify the written agreement to recall a member or members of the board, in which case such member or members shall be recalled effective~~



636490

~~immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in subparagraph 3.~~

~~3. If the board determines not to certify the written agreement to recall a member or members of the board, or does not certify the recall by a vote at a meeting, The board shall, within 5 full business days after the meeting, file with the division a petition for arbitration pursuant to the procedures in s. 718.1255. For the purposes of this section, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the board, the recall will be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 718.501. Any member or members so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.~~

~~3.4.~~ If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board within 10 full business days after the vote any and all records and property of the association.



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~~4.5.~~ If the board fails to duly notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition pursuant to s. 718.1255 challenging the board's failure to act. The petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

~~5.6.~~ If a vacancy occurs on the board as a result of a recall or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

~~6.7.~~ A board member who has been recalled may file a petition pursuant to s. 718.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall ~~is deemed certified~~. The association and the unit owner representative shall be named as the respondents.

~~7.8.~~ The division may not accept for filing a recall petition, whether filed pursuant to subparagraph 1.,





636490

subparagraph 2., subparagraph 4. 5., or subparagraph 6. 7. ~~and regardless of whether the recall was certified,~~ when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

(p) Service providers; conflicts of interest.—An association that is not a timeshare condominium association may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer.

Section 3. Subsection (4) of section 718.1255, Florida Statutes, is amended to read:

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

(4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF DISPUTES.—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may ~~shall~~ employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this chapter ~~section~~. No person may be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or



636490

arbitrated at least 10 disputes involving condominiums in this  
state during the 3 years immediately preceding the date of  
application, mediated or arbitrated at least 30 disputes in any  
subject area in this state during the 3 years immediately  
preceding the date of application, or attained board  
certification in real estate law or condominium and planned  
development law from The Florida Bar. Arbitrator certification  
is valid for 1 year. An arbitrator who does not maintain the  
minimum qualifications for initial certification may not have  
his or her certification renewed. The department may not enter  
into a legal services contract for an arbitration hearing under  
this chapter with an attorney who is not a certified arbitrator  
unless a certified arbitrator is not available within 50 miles  
of the dispute. The department shall adopt rules of procedure to  
govern such arbitration hearings including mediation incident  
thereto. The decision of an arbitrator shall be final; however,  
a decision shall not be deemed final agency action. Nothing in  
this provision shall be construed to foreclose parties from  
proceeding in a trial de novo unless the parties have agreed  
that the arbitration is binding. If judicial proceedings are  
initiated, the final decision of the arbitrator shall be  
admissible in evidence in the trial de novo.

(a) Prior to the institution of court litigation, a party  
to a dispute shall petition the division for nonbinding  
arbitration. The petition must be accompanied by a filing fee in  
the amount of \$50. Filing fees collected under this section must  
be used to defray the expenses of the alternative dispute  
resolution program.

(b) The petition must recite, and have attached thereto,



636490

supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;

2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition ~~shall be served by the division~~ upon all respondents. The arbitrator shall conduct a hearing within 30 days after being assigned or



636490

entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorney ~~attorneys'~~ fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by



636490

the physical presence of the party or its representative having full authority to settle without further consultation, provided that an association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board of administration ratify and approve such a settlement within 5 days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless they agree otherwise.

(g) The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal,



636490

and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorney ~~attorneys'~~ fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located



636490

within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney ~~attorney's~~ fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney ~~attorney's~~ fees incurred in the arbitration proceeding as well as the costs and reasonable attorney ~~attorney's~~ fees incurred in preparing for and attending any scheduled mediation. An arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney ~~attorney's~~ fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney ~~attorney's~~ fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall



636490

recover reasonable attorney ~~attorney's~~ fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

Section 4. Section 718.129, Florida Statutes, is created to read:

718.129 Fraudulent voting activities related to association elections; penalties.—The following acts constitute fraudulent voting activities related to association elections:

(1) A person who willfully, knowingly, and falsely swears or affirms to an oath or affirmation, or procures another person to willfully, knowingly, and falsely swear or affirm to an oath or affirmation, in connection with or arising out of voting or casting a ballot in an association election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who willfully and knowingly perpetrates or attempts to perpetrate, or willfully and knowingly aids another person in perpetrating or attempting to perpetrate, fraud in connection with or arising out of a vote or ballot cast, to be cast, or attempted to be cast by an elector in an association election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who willfully, knowingly, and fraudulently changes or attempts to change a vote or ballot cast, to be cast, or attempted to be cast by an elector in an association election to prevent such elector from voting or casting a ballot as he or





636490

she intended in such election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4)(a) A person who willfully and knowingly aids or advises another person in committing a violation of this section shall be punished as if he or she had committed the violation.

(b) A person who willfully and knowingly agrees, conspires, combines, or confederates with another person in committing a violation of this section shall be punished as if he or she had committed the violation.

(c) A person who willfully and knowingly aids or advises a person who has committed a violation of this section in avoiding or escaping detection, arrest, trial, or punishment shall be punished as if he or she had committed the violation. This paragraph does not prohibit a member of The Florida Bar from giving legal advice to a client.

Section 5. Subsection (5) is added to section 718.3025, Florida Statutes, to read:

718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.—

(5) A party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association, as provided in s. 718.301, which is not a timeshare condominium association, or an officer or board member of such party, may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of association lien for unpaid assessments or take a deed in lieu of foreclosure. If 50 percent or more of the units in the condominium are owned by a party



636490

contracting to provide maintenance or management services to an  
association managing a residential condominium after transfer of  
control of the association, as provided in s. 718.301, which is  
not a timeshare condominium association, or by an officer or  
board member of such party, the contract with the party  
providing maintenance or management services may be cancelled by  
a majority vote of the unit owners other than the contracting  
party or an officer or board member of such party.

Section 6. Section 718.3027, Florida Statutes, is created  
to read:

718.3027 Conflicts of interest.—

(1) Directors and officers of a board of an association  
that is not a timeshare condominium association, and the  
relatives of such directors and officers, must disclose to the  
board any activity that may reasonably be construed to be a  
conflict of interest. A rebuttable presumption of a conflict of  
interest exists if any of the following occurs without prior  
notice, as required in subsection (4):

(a) Any director, officer, or relative of any director or  
officer enters into a contract for goods or services with the  
association.

(b) Any director, officer, or relative of any director or  
officer holds an interest in a corporation, limited liability  
corporation, partnership, limited liability partnership, or  
other business entity that conducts business with the  
association or proposes to enter into a contract or other  
transaction with the association.

(2) If any director, officer, or relative of any director  
or officer proposes to engage in an activity that is a conflict



636490

of interest, as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. If the board votes against the proposed activity, the director, officer, or relative must notify the board in writing of his or her intention not to pursue the proposed activity, or the director or officer shall withdraw from office. If the board finds that any officer or director has violated this subsection, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.

(3) Any director, officer, or relative of any director or officer who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board, and is authorized to make a presentation to the board regarding the activity. After the presentation, the director, officer, or relative must leave the meeting during the discussion of, and the vote on, the activity. Any director or officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

(4) The board must provide notice to unit owners of a possible conflict of interest, as described in subsection (1), in accordance with the procedures in s. 718.112(2)(c). All contracts and transactional documents related to the possible conflict of interest must be attached to, and made available with, the meeting agenda.

(5) Any contract entered into between any director, officer, or relative of any director or officer and the



636490

association which has not been properly disclosed as a conflict of interest or potential conflict of interest as required by s. 718.111(12)(g) is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

Section 7. Subsection (5) of section 718.303, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

718.303 Obligations of owners and occupants; remedies.—

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than \$1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The



636490

suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(8) A receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the association pursuant to this chapter.

Section 8. Subsection (5) of section 718.5012, Florida Statutes, is amended to read:

718.5012 Ombudsman; powers and duties.—The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(5) To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred and reviewing secret ballots cast at a vote of the association.

Section 9. Section 718.71, Florida Statutes, is created to read:

718.71 Financial reporting.—An association shall provide an annual report to the department containing the names of all of the financial institutions with which it maintains accounts, and a copy of such report may be obtained from the department upon written request of any association member.

Section 10. This act shall take effect July 1, 2017.

===== T I T L E   A M E N D M E N T =====  
And the title is amended as follows:



636490

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to condominiums; amending s. 718.111, F.S.; prohibiting an association from hiring an attorney that represents the management company of the association; prohibiting a board member, manager, or management company from purchasing a unit at a foreclosure sale under certain circumstances; providing recordkeeping requirements; providing that the official records of an association are open to inspection by unit renters; providing that a renter of a unit has a right to inspect and copy the association's bylaws and rules; providing criminal penalties; providing a definition; providing requirements relating to the posting of specified documents on an association's website; providing a remedy for an association's failure to provide a unit owner with a copy of the most recent financial report; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to maintain and provide copies of financial reports; amending s. 718.112, F.S.; providing board member term limits; providing an exception; deleting certification requirements relating to the recall of board members; revising the amount of time in which a recalled board member must turn over records and property of the association to the board; prohibiting certain associations from employing or contracting with a service provider that



636490

1171 is owned or operated by certain persons; amending s.  
1172 718.1255, F.S.; authorizing, rather than requiring,  
1173 the division to employ full-time attorneys to conduct  
1174 certain arbitration hearings; providing requirements  
1175 for the certification of arbitrators; prohibiting the  
1176 Department of Business and Professional Regulation  
1177 from entering into a legal services contract for  
1178 certain arbitration hearings; requiring the division  
1179 to assign or enter into contracts with arbitrators;  
1180 requiring arbitrators to conduct hearings within a  
1181 specified period; providing an exception; providing  
1182 arbitration proceeding requirements; creating s.  
1183 718.129, F.S.; providing that certain activities  
1184 constitute fraudulent voting activities related to  
1185 association elections; providing criminal penalties;  
1186 amending s. 718.3025, F.S.; prohibiting specified  
1187 parties from purchasing a unit at a foreclosure sale  
1188 resulting from the association's foreclosure of  
1189 association lien for unpaid assessments or from taking  
1190 a deed in lieu of foreclosures; authorizing a contract  
1191 with a party providing maintenance or management  
1192 services to be cancelled by a majority vote of certain  
1193 unit owners under specified conditions; creating s.  
1194 718.3027, F.S.; providing requirements relating to  
1195 board director and officer conflicts of interest;  
1196 providing that certain contracts are voidable if they  
1197 do not meet specified notice requirements and  
1198 terminate, subject to a certain condition; amending s.  
1199 718.303, F.S.; providing requirements relating to the



636490

1200 suspension of voting rights of unit owners and  
1201 members; prohibiting a receiver from exercising the  
1202 voting rights of a unit owner whose unit is placed in  
1203 receivership; amending s. 718.5012, F.S.; providing  
1204 the ombudsman with an additional power; creating s.  
1205 718.71, F.S.; providing financial reporting  
1206 requirements of an association; providing an effective  
1207 date.



By Senator Garcia

36-00715B-17

20171682\_\_

1 A bill to be entitled  
2 An act relating to condominiums; amending s. 718.111,  
3 F.S.; prohibiting an attorney from representing a  
4 board under certain conditions; prohibiting certain  
5 actions by a board member or management company;  
6 providing recordkeeping requirements; providing that  
7 the official records of an association are open to  
8 inspection by unit renters; providing criminal  
9 penalties; providing a definition; providing  
10 requirements relating to the posting of specified  
11 documents on an association's website; providing a  
12 remedy for an association's failure to provide a unit  
13 owner with a copy of the most recent financial report;  
14 requiring the Division of Florida Condominiums,  
15 Timeshares, and Mobile Homes to maintain and provide  
16 copies of financial reports; amending s. 718.112,  
17 F.S.; providing board member term limits; providing an  
18 exception; deleting certification requirements  
19 relating to the recall of board members; revising the  
20 amount of time in which a recalled board member must  
21 turn over records and property of the association to  
22 the board; prohibiting an association from employing  
23 or contracting with a service provider that is owned  
24 or operated by certain persons; amending s. 718.1255,  
25 F.S.; authorizing, rather than requiring, the division  
26 to employ full-time attorneys to conduct certain  
27 arbitration hearings; providing requirements for the  
28 certification of arbitrators; prohibiting the  
29 Department of Business and Professional Regulation

36-00715B-17

20171682\_\_

from entering into a legal services contract for certain arbitration hearings; requiring the division to assign or enter into contracts with arbitrators; requiring arbitrators to conduct hearings within a specified period; providing an exception; providing arbitration proceeding requirements; creating s. 718.129, F.S.; providing that certain activities constitute fraudulent voting activities related to association elections; providing criminal penalties; amending s. 718.3025, F.S.; prohibiting specified parties from certain activities; creating s. 718.3027, F.S.; providing requirements relating to board director and officer conflicts of interest; providing that certain contracts are null and void if they do not meet specified notice requirements; amending s. 718.303, F.S.; providing requirements relating to the suspension of voting rights of unit owners and members; prohibiting a receiver from exercising the voting rights of a unit owner whose unit is placed in receivership; amending s. 718.5012, F.S.; providing the ombudsman with an additional power; creating s. 718.71, F.S.; providing financial reporting requirements of an association; providing an effective date.

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

Section 1. Subsections (3) and (9), paragraphs (a) and (c) of subsection (12), and subsection (13) of section 718.111,

36-00715B-17

20171682\_\_

Florida Statutes, are amended, and paragraph (g) is added to subsection (12) of that section, to read:

718.111 The association.—

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED; CONFLICT OF INTEREST.—

(a) The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be

36-00715B-17

20171682\_\_

88 available.

89 (b) An attorney may not represent a board if the attorney  
90 represents the management company of the association.

91 (9) PURCHASE OF UNITS.—The association has the power,  
92 unless prohibited by the declaration, articles of incorporation,  
93 or bylaws of the association, to purchase units in the  
94 condominium and to acquire and hold, lease, mortgage, and convey  
95 them. There shall be no limitation on the association's right to  
96 purchase a unit at a foreclosure sale resulting from the  
97 association's foreclosure of its lien for unpaid assessments, or  
98 to take title by deed in lieu of foreclosure. However, a board  
99 member or management company may not purchase a unit at a  
100 foreclosure sale resulting from the association's foreclosure of  
101 its lien for unpaid assessments or take title by deed in lieu of  
102 foreclosure.

103 (12) OFFICIAL RECORDS.—

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

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

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

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

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

36-00715B-17

20171682\_\_

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

118 6. A book or books that contain the minutes of all meetings  
119 of the association, the board of administration, and the unit  
120 owners, which minutes must be retained for at least 7 years.

121 7. A current roster of all unit owners and their mailing  
122 addresses, unit identifications, voting certifications, and, if  
123 known, telephone numbers. The association shall also maintain  
124 the electronic mailing addresses and facsimile numbers of unit  
125 owners consenting to receive notice by electronic transmission.  
126 The electronic mailing addresses and facsimile numbers are not  
127 accessible to unit owners if consent to receive notice by  
128 electronic transmission is not provided in accordance with sub-  
129 subparagraph (c)5.e. ~~subparagraph (c)5.~~ However, the association  
130 is not liable for an inadvertent disclosure of the electronic  
131 mail address or facsimile number for receiving electronic  
132 transmission of notices.

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

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

139 10. Bills of sale or transfer for all property owned by the  
140 association.

141 11. Accounting records for the association and separate  
142 accounting records for each condominium that the association  
143 operates. All accounting records must be maintained for at least  
144 7 years. Any person who knowingly or intentionally defaces or  
145 destroys such records, or who knowingly or intentionally fails

36-00715B-17

20171682\_\_

to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s.

718.501(1)(d). The accounting records must include, but are not limited to:

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

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

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

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

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

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

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

16. A copy of the inspection report as described in s.

36-00715B-17

20171682\_\_

175 718.301(4)(p).

176 17. Bids for materials, equipment, or services.

177 (c)1. The official records of the association are open to  
178 inspection by any association member, ~~or~~ the authorized  
179 representative of such member, or the renter of such member's  
180 unit at all reasonable times. The right to inspect the records  
181 includes the right to make or obtain copies, at the reasonable  
182 expense, if any, of the member, authorized representative of  
183 such member, or the renter of such member's unit. The  
184 association may adopt reasonable rules regarding the frequency,  
185 time, location, notice, and manner of record inspections and  
186 copying. The failure of an association to provide the records  
187 within 10 working days after receipt of a written request  
188 creates a rebuttable presumption that the association willfully  
189 failed to comply with this paragraph. A unit owner who is denied  
190 access to official records is entitled to the actual damages or  
191 minimum damages for the association's willful failure to comply.  
192 Minimum damages are \$50 per calendar day for up to 10 days,  
193 beginning on the 11th working day after receipt of the written  
194 request. The failure to permit inspection entitles any person  
195 prevailing in an enforcement action to recover reasonable  
196 attorney fees from the person in control of the records who,  
197 directly or indirectly, knowingly denied access to the records.

198 2. Any director or member of the board or association who  
199 knowingly, willfully, and repeatedly violates subparagraph 1.  
200 commits a misdemeanor of the second degree, punishable as  
201 provided in s. 775.082 or s. 775.083. For purposes of this  
202 subparagraph, the term "repeatedly violates" means more than two  
203 violations within a 12-month period.

36-00715B-17

20171682\_\_

204       3. Any person who knowingly or intentionally defaces or  
205 destroys accounting records that are required by this chapter to  
206 be maintained during the period for which such records are  
207 required to be maintained, or who knowingly or intentionally  
208 fails to create or maintain accounting records that are required  
209 to be created or maintained, with the intent of causing harm to  
210 the association or one or more of its members, commits a  
211 misdemeanor of the first degree, punishable as provided in s.  
212 775.082 or s. 775.083.

213       4. Any person who willfully and knowingly refuses to  
214 release or otherwise produce association records with the intent  
215 of facilitating the commission of a crime or avoiding or  
216 escaping detection, arrest, trial, or punishment for a crime  
217 commits a felony of the third degree, punishable as provided in  
218 s. 775.082, s. 775.083, or s. 775.084 ~~is personally subject to a~~  
219 ~~civil penalty pursuant to s. 718.501(1)(d).~~

220       5. The association shall maintain an adequate number of  
221 copies of the declaration, articles of incorporation, bylaws,  
222 and rules, and all amendments to each of the foregoing, as well  
223 as the question and answer sheet as described in s. 718.504 and  
224 year-end financial information required under this section, on  
225 the condominium property to ensure their availability to unit  
226 owners and prospective purchasers, and may charge its actual  
227 costs for preparing and furnishing these documents to those  
228 requesting the documents. An association shall allow a member or  
229 his or her authorized representative to use a portable device,  
230 including a smartphone, tablet, portable scanner, or any other  
231 technology capable of scanning or taking photographs, to make an  
232 electronic copy of the official records in lieu of the



36-00715B-17

20171682\_\_

association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

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

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

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

d.4. Medical records of unit owners.

e.5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers,

36-00715B-17

20171682\_\_

262 facsimile numbers, emergency contact information, addresses of a  
263 unit owner other than as provided to fulfill the association's  
264 notice requirements, and other personal identifying information  
265 of any person, excluding the person's name, unit designation,  
266 mailing address, property address, and any address, e-mail  
267 address, or facsimile number provided to the association to  
268 fulfill the association's notice requirements. Notwithstanding  
269 the restrictions in this sub-subparagraph ~~subparagraph~~, an  
270 association may print and distribute to parcel owners a  
271 directory containing the name, parcel address, and all telephone  
272 numbers of each parcel owner. However, an owner may exclude his  
273 or her telephone numbers from the directory by so requesting in  
274 writing to the association. An owner may consent in writing to  
275 the disclosure of other contact information described in this  
276 sub-subparagraph ~~subparagraph~~. The association is not liable for  
277 the inadvertent disclosure of information that is protected  
278 under this sub-subparagraph ~~subparagraph~~ if the information is  
279 included in an official record of the association and is  
280 voluntarily provided by an owner and not requested by the  
281 association.

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

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

288 (g)1. An association with 500 or more units that does not  
289 manage timeshare units shall post digital copies of the  
290 documents specified in subparagraph 2. on its website.

36-00715B-17

20171682\_\_

291 a. The association's website must be:

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

294 (II) A website or web portal operated by a third-party  
295 provider with whom the association owns, leases, rents, or  
296 otherwise obtains the right to operate a web page, subpage, web  
297 portal, or collection of subpages or web portals dedicated to  
298 the association's activities and on which required notices,  
299 records, and documents may be posted by the association.

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

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

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

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

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

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

36-00715B-17

20171682\_\_

be a certified copy.

d. The rules of the association.

e. Any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

Summaries of bids for materials, equipment, or services must be maintained on the website for 1 year.

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

g. The financial report required by subsection (13) and any proposed financial report to be considered at a meeting.

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

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

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2) and 718.3026(3).

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

36-00715B-17

20171682\_\_

the document or the information within the document will be considered, including the following documents:

(I) The proposed annual budget required by s. 718.112(2)(f), which must be provided at least 14 days before the meeting.

(II) The proposed financial report required by subsection (13).

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

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after ~~upon~~ receipt of a written request

36-00715B-17

20171682\_\_

378 from the unit owner. The division shall adopt rules setting  
379 forth uniform accounting principles and standards to be used by  
380 all associations and addressing the financial reporting  
381 requirements for multicondominium associations. The rules must  
382 include, but not be limited to, standards for presenting a  
383 summary of association reserves, including a good faith estimate  
384 disclosing the annual amount of reserve funds that would be  
385 necessary for the association to fully fund reserves for each  
386 reserve item based on the straight-line accounting method. This  
387 disclosure is not applicable to reserves funded via the pooling  
388 method. In adopting such rules, the division shall consider the  
389 number of members and annual revenues of an association.  
390 Financial reports shall be prepared as follows:

391 (a) An association that meets the criteria of this  
392 paragraph shall prepare a complete set of financial statements  
393 in accordance with generally accepted accounting principles. The  
394 financial statements must be based upon the association's total  
395 annual revenues, as follows:

396 1. An association with total annual revenues of \$150,000 or  
397 more, but less than \$300,000, shall prepare compiled financial  
398 statements.

399 2. An association with total annual revenues of at least  
400 \$300,000, but less than \$500,000, shall prepare reviewed  
401 financial statements.

402 3. An association with total annual revenues of \$500,000 or  
403 more shall prepare audited financial statements.

404 (b)1. An association with total annual revenues of less  
405 than \$150,000 shall prepare a report of cash receipts and  
406 expenditures.

36-00715B-17

20171682\_\_

2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).

3. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

36-00715B-17

20171682\_\_

436 1. A report of cash receipts and expenditures in lieu of a  
437 compiled, reviewed, or audited financial statement;

438 2. A report of cash receipts and expenditures or a compiled  
439 financial statement in lieu of a reviewed or audited financial  
440 statement; or

441 3. A report of cash receipts and expenditures, a compiled  
442 financial statement, or a reviewed financial statement in lieu  
443 of an audited financial statement.

444  
445 Such meeting and approval must occur before the end of the  
446 fiscal year and is effective only for the fiscal year in which  
447 the vote is taken, except that the approval may also be  
448 effective for the following fiscal year. If the developer has  
449 not turned over control of the association, all unit owners,  
450 including the developer, may vote on issues related to the  
451 preparation of the association's financial reports, from the  
452 date of incorporation of the association through the end of the  
453 second fiscal year after the fiscal year in which the  
454 certificate of a surveyor and mapper is recorded pursuant to s.  
455 718.104(4)(e) or an instrument that transfers title to a unit in  
456 the condominium which is not accompanied by a recorded  
457 assignment of developer rights in favor of the grantee of such  
458 unit is recorded, whichever occurs first. Thereafter, all unit  
459 owners except the developer may vote on such issues until  
460 control is turned over to the association by the developer. Any  
461 audit or review prepared under this section shall be paid for by  
462 the developer if done before turnover of control of the  
463 association. An association may not waive the financial  
464 reporting requirements of this section for more than 3



36-00715B-17

20171682\_\_

consecutive years.

(e) If an association has not mailed or hand delivered to the unit owner a copy of the most recent financial report within 5 business days after receipt of a written request from the unit owner, the unit owner may give notice to the division of the association's failure to comply. Upon notification, the division shall give notice to the association that the association must mail or hand deliver the copy of the most recent financial report to the unit owner and the division within 5 business days after such notice. Any association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d). A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

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

718.112 Bylaws.—

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

(d) *Unit owner meetings.*—

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

36-00715B-17

20171682\_\_

494       2. Unless the bylaws provide otherwise, a vacancy on the  
495 board caused by the expiration of a director's term shall be  
496 filled by electing a new board member, and the election must be  
497 by secret ballot. An election is not required if the number of  
498 vacancies equals or exceeds the number of candidates. For  
499 purposes of this paragraph, the term "candidate" means an  
500 eligible person who has timely submitted the written notice, as  
501 described in sub-subparagraph 4.a., of his or her intention to  
502 become a candidate. Except in a timeshare or nonresidential  
503 condominium, or if the staggered term of a board member does not  
504 expire until a later annual meeting, or if all members' terms  
505 would otherwise expire but there are no candidates, the terms of  
506 all board members expire at the annual meeting, and such members  
507 may stand for reelection unless prohibited by the bylaws. ~~If the~~  
508 ~~bylaws or articles of incorporation permit terms of no more than~~  
509 ~~2 years, the association~~ Board members may serve 2-year terms if  
510 permitted by the bylaws or articles of incorporation. A board  
511 member may not serve more than four consecutive 2-year terms,  
512 unless approved by an affirmative vote of two-thirds of the  
513 total voting interests of the association. If the number of  
514 board members whose terms expire at the annual meeting equals or  
515 exceeds the number of candidates, the candidates become members  
516 of the board effective upon the adjournment of the annual  
517 meeting. Unless the bylaws provide otherwise, any remaining  
518 vacancies shall be filled by the affirmative vote of the  
519 majority of the directors making up the newly constituted board  
520 even if the directors constitute less than a quorum or there is  
521 only one director. In a residential condominium association of  
522 more than 10 units or in a residential condominium association

36-00715B-17

20171682\_\_

that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must

36-00715B-17

20171682\_\_

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

36-00715B-17

20171682\_\_

581 However, if a unit is owned by more than one person, the  
582 association must provide notice to the address that the  
583 developer identifies for that purpose and thereafter as one or  
584 more of the owners of the unit advise the association in  
585 writing, or if no address is given or the owners of the unit do  
586 not agree, to the address provided on the deed of record. An  
587 officer of the association, or the manager or other person  
588 providing notice of the association meeting, must provide an  
589 affidavit or United States Postal Service certificate of  
590 mailing, to be included in the official records of the  
591 association affirming that the notice was mailed or hand  
592 delivered in accordance with this provision.

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

600 a. At least 60 days before a scheduled election, the  
601 association shall mail, deliver, or electronically transmit, by  
602 separate association mailing or included in another association  
603 mailing, delivery, or transmission, including regularly  
604 published newsletters, to each unit owner entitled to a vote, a  
605 first notice of the date of the election. A unit owner or other  
606 eligible person desiring to be a candidate for the board must  
607 give written notice of his or her intent to be a candidate to  
608 the association at least 40 days before a scheduled election.  
609 Together with the written notice and agenda as set forth in

36-00715B-17

20171682\_\_

subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

36-00715B-17

20171682\_\_

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity

36-00715B-17

20171682\_\_

of any board action.

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

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

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

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

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

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be



36-00715B-17

20171682\_\_

697 filled by the affirmative vote of the majority of the remaining  
698 directors, even if the remaining directors constitute less than  
699 a quorum, or by the sole remaining director. In the alternative,  
700 a board may hold an election to fill the vacancy, in which case  
701 the election procedures must conform to sub-subparagraph 4.a.  
702 unless the association governs 10 units or fewer and has opted  
703 out of the statutory election process, in which case the bylaws  
704 of the association control. Unless otherwise provided in the  
705 bylaws, a board member appointed or elected under this section  
706 shall fill the vacancy for the unexpired term of the seat being  
707 filled. Filling vacancies created by recall is governed by  
708 paragraph (j) and rules adopted by the division.

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

715  
716 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an  
717 association of 10 or fewer units may, by affirmative vote of a  
718 majority of the total voting interests, provide for different  
719 voting and election procedures in its bylaws, which may be by a  
720 proxy specifically delineating the different voting and election  
721 procedures. The different voting and election procedures may  
722 provide for elections to be conducted by limited or general  
723 proxy.

724 (j) *Recall of board members.*—Subject to s. 718.301, any  
725 member of the board of administration may be recalled and

36-00715B-17

20171682\_\_

726 removed from office with or without cause by the vote or  
727 agreement in writing by a majority of all the voting interests.  
728 A special meeting of the unit owners to recall a member or  
729 members of the board of administration may be called by 10  
730 percent of the voting interests giving notice of the meeting as  
731 required for a meeting of unit owners, and the notice shall  
732 state the purpose of the meeting. Electronic transmission may  
733 not be used as a method of giving notice of a meeting called in  
734 whole or in part for this purpose.

735 1. If the recall is approved by a majority of all voting  
736 interests by a vote at a meeting, the recall will be effective  
737 as provided in this paragraph. The board shall duly notice and  
738 hold a board meeting within 5 full business days after the  
739 adjournment of the unit owner meeting to recall one or more  
740 board members. ~~At the meeting, the board shall either certify~~  
741 ~~the recall, in which case~~ Such member or members shall be  
742 recalled effective immediately and shall turn over to the board  
743 within 10 ~~5~~ full business days after the vote any and all  
744 records and property of the association in their possession, ~~or~~  
745 ~~shall proceed as set forth in subparagraph 3.~~

746 2. If the proposed recall is by an agreement in writing by  
747 a majority of all voting interests, the agreement in writing or  
748 a copy thereof shall be served on the association by certified  
749 mail or by personal service in the manner authorized by chapter  
750 48 and the Florida Rules of Civil Procedure. The board of  
751 administration shall duly notice and hold a meeting of the board  
752 within 5 full business days after receipt of the agreement in  
753 writing. ~~At the meeting, the board shall either certify the~~  
754 ~~written agreement to recall a member or members of the board, in~~

36-00715B-17

20171682\_\_

755 ~~which case such member or members shall be recalled effective~~  
756 ~~immediately and shall turn over to the board within 5 full~~  
757 ~~business days any and all records and property of the~~  
758 ~~association in their possession, or proceed as described in~~  
759 ~~subparagraph 3.~~

760 ~~3. If the board determines not to certify the written~~  
761 ~~agreement to recall a member or members of the board, or does~~  
762 ~~not certify the recall by a vote at a meeting, The board shall,~~  
763 ~~within 5 full business days after the meeting, file with the~~  
764 ~~division a petition for arbitration pursuant to the procedures~~  
765 ~~in s. 718.1255. For the purposes of this section, the unit~~  
766 ~~owners who voted at the meeting or who executed the agreement in~~  
767 ~~writing shall constitute one party under the petition for~~  
768 ~~arbitration. If the arbitrator certifies the recall as to any~~  
769 ~~member or members of the board, the recall will be effective~~  
770 ~~upon mailing of the final order of arbitration to the~~  
771 ~~association. If the association fails to comply with the order~~  
772 ~~of the arbitrator, the division may take action pursuant to s.~~  
773 ~~718.501. Any member or members so recalled shall deliver to the~~  
774 ~~board any and all records of the association in their possession~~  
775 ~~within 5 full business days after the effective date of the~~  
776 ~~recall.~~

777 ~~3.4.~~ If the board fails to duly notice and hold a board  
778 meeting within 5 full business days after service of an  
779 agreement in writing or within 5 full business days after the  
780 adjournment of the unit owner recall meeting, the recall shall  
781 be deemed effective and the board members so recalled shall  
782 ~~immediately~~ turn over to the board within 10 full business days  
783 after the vote any and all records and property of the

36-00715B-17

20171682\_\_

784 association.

785 ~~4.5.~~ If the board fails to duly notice and hold the  
786 required meeting or fails to file the required petition, the  
787 unit owner representative may file a petition pursuant to s.  
788 718.1255 challenging the board's failure to act. The petition  
789 must be filed within 60 days after the expiration of the  
790 applicable 5-full-business-day period. The review of a petition  
791 under this subparagraph is limited to the sufficiency of service  
792 on the board and the facial validity of the written agreement or  
793 ballots filed.

794 ~~5.6.~~ If a vacancy occurs on the board as a result of a  
795 recall or removal and less than a majority of the board members  
796 are removed, the vacancy may be filled by the affirmative vote  
797 of a majority of the remaining directors, notwithstanding any  
798 provision to the contrary contained in this subsection. If  
799 vacancies occur on the board as a result of a recall and a  
800 majority or more of the board members are removed, the vacancies  
801 shall be filled in accordance with procedural rules to be  
802 adopted by the division, which rules need not be consistent with  
803 this subsection. The rules must provide procedures governing the  
804 conduct of the recall election as well as the operation of the  
805 association during the period after a recall but before the  
806 recall election.

807 ~~6.7.~~ A board member who has been recalled may file a  
808 petition pursuant to s. 718.1255 challenging the validity of the  
809 recall. The petition must be filed within 60 days after the  
810 recall ~~is deemed certified~~. The association and the unit owner  
811 representative shall be named as the respondents.

812 ~~7.8.~~ The division may not accept for filing a recall

36-00715B-17

20171682\_\_

petition, whether filed pursuant to subparagraph 1.,  
subparagraph 2., subparagraph 4. ~~5.~~, or subparagraph 6. ~~7.~~ and  
~~regardless of whether the recall was certified,~~ when there are  
60 or fewer days until the scheduled reelection of the board  
member sought to be recalled or when 60 or fewer days have  
elapsed since the election of the board member sought to be  
recalled.

(p) Service providers; conflicts of interest.—An  
association may not employ or contract with any service provider  
that is owned or operated by a board member or any person who  
has a financial relationship with a board member.

Section 3. Subsection (4) of section 718.1255, Florida  
Statutes, is amended to read:

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

(4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF  
DISPUTES.—The Division of Florida Condominiums, Timeshares, and  
Mobile Homes of the Department of Business and Professional  
Regulation may ~~shall~~ employ full-time attorneys to act as  
arbitrators to conduct the arbitration hearings provided by this  
chapter. The division may also certify attorneys who are not  
employed by the division to act as arbitrators to conduct the  
arbitration hearings provided by this chapter ~~section~~. No person  
may be employed by the department as a full-time arbitrator  
unless he or she is a member in good standing of The Florida  
Bar. A person may only be certified by the division to act as an  
arbitrator if he or she has been a member in good standing of  
The Florida Bar for at least 5 years and has mediated or

36-00715B-17

20171682\_\_

842 arbitrated at least 10 disputes involving condominiums in this  
843 state during the 3 years immediately preceding the date of  
844 application, mediated or arbitrated at least 30 disputes in any  
845 subject area in this state during the 3 years immediately  
846 preceding the date of application, or attained board  
847 certification in real estate law or condominium and planned  
848 development law from The Florida Bar. Arbitrator certification  
849 is valid for 1 year. An arbitrator who does not maintain the  
850 minimum qualifications for initial certification may not have  
851 his or her certification renewed. The department may not enter  
852 into a legal services contract for an arbitration hearing under  
853 this chapter with an attorney who is not a certified arbitrator  
854 unless a certified arbitrator is not available within 50 miles  
855 of the dispute. The department shall adopt rules of procedure to  
856 govern such arbitration hearings including mediation incident  
857 thereto. The decision of an arbitrator shall be final; however,  
858 a decision shall not be deemed final agency action. Nothing in  
859 this provision shall be construed to foreclose parties from  
860 proceeding in a trial de novo unless the parties have agreed  
861 that the arbitration is binding. If judicial proceedings are  
862 initiated, the final decision of the arbitrator shall be  
863 admissible in evidence in the trial de novo.

864 (a) Prior to the institution of court litigation, a party  
865 to a dispute shall petition the division for nonbinding  
866 arbitration. The petition must be accompanied by a filing fee in  
867 the amount of \$50. Filing fees collected under this section must  
868 be used to defray the expenses of the alternative dispute  
869 resolution program.

870 (b) The petition must recite, and have attached thereto,

36-00715B-17

20171682\_\_

supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;

2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition ~~shall be served by the division~~ upon all respondents. The arbitrator shall conduct a hearing within 30 days after being assigned or

36-00715B-17

20171682\_\_

entering into a contract unless the petition is withdrawn or a  
continuance is granted for good cause shown.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorneys' fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the



36-00715B-17

20171682\_\_

929 physical presence of the party or its representative having full  
930 authority to settle without further consultation, provided that  
931 an association may comply by having one or more representatives  
932 present with full authority to negotiate a settlement and  
933 recommend that the board of administration ratify and approve  
934 such a settlement within 5 days from the date of the mediation  
935 conference. The parties shall share equally the expense of  
936 mediation, unless they agree otherwise.

937 (g) The purpose of mediation as provided for by this  
938 section is to present the parties with an opportunity to resolve  
939 the underlying dispute in good faith, and with a minimum  
940 expenditure of time and resources.

941 (h) Mediation proceedings must generally be conducted in  
942 accordance with the Florida Rules of Civil Procedure, and these  
943 proceedings are privileged and confidential to the same extent  
944 as court-ordered mediation. Persons who are not parties to the  
945 dispute are not allowed to attend the mediation conference  
946 without the consent of all parties, with the exception of  
947 counsel for the parties and corporate representatives designated  
948 to appear for a party. If the mediator declares an impasse after  
949 a mediation conference has been held, the arbitration proceeding  
950 terminates, unless all parties agree in writing to continue the  
951 arbitration proceeding, in which case the arbitrator's decision  
952 shall be binding or nonbinding, as agreed upon by the parties;  
953 in the arbitration proceeding, the arbitrator shall not consider  
954 any evidence relating to the unsuccessful mediation except in a  
955 proceeding to impose sanctions for failure to appear at the  
956 mediation conference. If the parties do not agree to continue  
957 arbitration, the arbitrator shall enter an order of dismissal,

36-00715B-17

20171682\_\_

and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorneys' fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located

36-00715B-17

20171682\_\_

within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney's fees incurred in the arbitration proceeding as well as the costs and reasonable attorney's fees incurred in preparing for and attending any scheduled mediation. An arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney's fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall

36-00715B-17

20171682\_\_

1016 recover reasonable attorney's fees and costs incurred in  
1017 enforcing the arbitration award. A mediation settlement may also  
1018 be enforced through the county or circuit court, as applicable,  
1019 and any costs and fees incurred in the enforcement of a  
1020 settlement agreement reached at mediation must be awarded to the  
1021 prevailing party in any enforcement action.

1022 Section 4. Section 718.129, Florida Statutes, is created to  
1023 read:

1024 718.129 Fraudulent voting activities related to association  
1025 elections; penalties.—The following acts constitute fraudulent  
1026 voting activities related to association elections:

1027 (1) A person who willfully, knowingly, and falsely swears  
1028 or affirms to an oath or affirmation, or procures another person  
1029 to willfully, knowingly, and falsely swear or affirm to an oath  
1030 or affirmation, in connection with or arising out of voting or  
1031 casting a ballot in an association election commits a felony of  
1032 the third degree, punishable as provided in s. 775.082, s.  
1033 775.083, or s. 775.084.

1034 (2) A person who willfully and knowingly perpetrates or  
1035 attempts to perpetrate, or willfully and knowingly aids another  
1036 person in perpetrating or attempting to perpetrate, fraud in  
1037 connection with or arising out of a vote or ballot cast, to be  
1038 cast, or attempted to be cast by an elector in an association  
1039 election commits a felony of the third degree, punishable as  
1040 provided in s. 775.082, s. 775.083, or s. 775.084.

1041 (3) A person who willfully, knowingly, and fraudulently  
1042 changes or attempts to change a vote or ballot cast, to be cast,  
1043 or attempted to be cast by an elector in an association election  
1044 to prevent such elector from voting or casting a ballot as he or

36-00715B-17

20171682\_\_

1045 she intended in such election commits a felony of the third  
1046 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
1047 775.084.

1048 (4) (a) A person who willfully and knowingly aids or advises  
1049 another person in committing a violation of this section shall  
1050 be punished as if he or she had committed the violation.

1051 (b) A person who willfully and knowingly agrees, conspires,  
1052 combines, or confederates with another person in committing a  
1053 violation of this section shall be punished as if he or she had  
1054 committed the violation.

1055 (c) A person who willfully and knowingly aids or advises a  
1056 person who has committed a violation of this section in avoiding  
1057 or escaping detection, arrest, trial, or punishment shall be  
1058 punished as if he or she had committed the violation. This  
1059 paragraph does not prohibit a member of The Florida Bar from  
1060 giving legal advice to a client.

1061 Section 5. Subsection (5) is added to section 718.3025,  
1062 Florida Statutes, to read:

1063 718.3025 Agreements for operation, maintenance, or  
1064 management of condominiums; specific requirements.—

1065 (5) A party contracting to provide maintenance or  
1066 management services, or a board member of such party, may not:

1067 (a) Own 50 percent or more of the units in the condominium.

1068 (b) Purchase a property subject to a lien by the  
1069 association.

1070 Section 6. Section 718.3027, Florida Statutes, is created  
1071 to read:

1072 718.3027 Conflicts of interest.—

1073 (1) Directors and officers of a board of an association

36-00715B-17

20171682\_\_

1074 that is not a timeshare condominium association, and the  
1075 relatives of such directors and officers, must disclose to the  
1076 board any activity that may reasonably be construed to be a  
1077 conflict of interest. A rebuttable presumption of a conflict of  
1078 interest exists if any of the following occurs without prior  
1079 notice, as required in subsection (4):

1080 (a) Any director, officer, or relative of any director or  
1081 officer enters into a contract for goods or services with the  
1082 association.

1083 (b) Any director, officer, or relative of any director or  
1084 officer holds an interest in a corporation, limited liability  
1085 corporation, partnership, limited liability partnership, or  
1086 other business entity that conducts business with the  
1087 association or proposes to enter into a contract or other  
1088 transaction with the association.

1089 (2) If any director, officer, or relative of any director  
1090 or officer proposes to engage in an activity that is a conflict  
1091 of interest, as described in subsection (1), the proposed  
1092 activity must be listed on, and all contracts and transactional  
1093 documents related to the proposed activity must be attached to,  
1094 the meeting agenda. If the board votes against the proposed  
1095 activity, the director, officer, or relative must notify the  
1096 board in writing of his or her intention not to pursue the  
1097 proposed activity, or the director or officer shall withdraw  
1098 from office. If the board finds that any officer or director has  
1099 violated this subsection, the board must immediately remove the  
1100 officer or director from office. The vacancy shall be filled  
1101 according to general law.

1102 (3) Any director, officer, or relative of any director or

36-00715B-17

20171682\_\_

1103 officer who is a party to, or has an interest in, an activity  
1104 that is a possible conflict of interest, as described in  
1105 subsection (1), may attend the meeting at which the activity is  
1106 considered by the board, and is authorized to make a  
1107 presentation to the board regarding the activity. After the  
1108 presentation, the director, officer, or relative must leave the  
1109 meeting during the discussion of, and the vote on, the activity.  
1110 Any director or officer who is a party to, or has an interest  
1111 in, the activity must recuse himself or herself from the vote.

1112 (4) The board must provide notice to unit owners of a  
1113 possible conflict of interest, as described in subsection (1),  
1114 in accordance with the procedures in s. 718.112(2)(c). All  
1115 contracts and transactional documents related to the possible  
1116 conflict of interest must be attached to, and made available  
1117 with, the meeting agenda.

1118 (5) Any contract entered into between any director,  
1119 officer, or relative of any director or officer and the  
1120 association that is not properly noticed before consideration in  
1121 accordance with the procedures in s. 718.112(2)(c) is null and  
1122 void.

1123 Section 7. Subsection (5) of section 718.303, Florida  
1124 Statutes, is amended, and subsection (8) is added to that  
1125 section, to read:

1126 718.303 Obligations of owners and occupants; remedies.—

1127 (5) An association may suspend the voting rights of a unit  
1128 owner or member due to nonpayment of any fee, fine, or other  
1129 monetary obligation due to the association which is more than  
1130 \$1,000 and more than 90 days delinquent. Proof of such  
1131 obligation must be provided to the unit owner or member 30 days

36-00715B-17

20171682\_\_

1132 before such suspension takes effect. A voting interest or  
1133 consent right allocated to a unit owner or member which has been  
1134 suspended by the association shall be subtracted from the total  
1135 number of voting interests in the association, which shall be  
1136 reduced by the number of suspended voting interests when  
1137 calculating the total percentage or number of all voting  
1138 interests available to take or approve any action, and the  
1139 suspended voting interests shall not be considered for any  
1140 purpose, including, but not limited to, the percentage or number  
1141 of voting interests necessary to constitute a quorum, the  
1142 percentage or number of voting interests required to conduct an  
1143 election, or the percentage or number of voting interests  
1144 required to approve an action under this chapter or pursuant to  
1145 the declaration, articles of incorporation, or bylaws. The  
1146 suspension ends upon full payment of all obligations currently  
1147 due or overdue the association. The notice and hearing  
1148 requirements under subsection (3) do not apply to a suspension  
1149 imposed under this subsection.

1150 (8) A receiver may not exercise voting rights of any unit  
1151 owner whose unit is placed in receivership for the benefit of  
1152 the association pursuant to this chapter.

1153 Section 8. Subsection (5) of section 718.5012, Florida  
1154 Statutes, is amended to read:

1155 718.5012 Ombudsman; powers and duties.—The ombudsman shall  
1156 have the powers that are necessary to carry out the duties of  
1157 his or her office, including the following specific powers:

1158 (5) To monitor and review procedures and disputes  
1159 concerning condominium elections or meetings, including, but not  
1160 limited to, recommending that the division pursue enforcement



36-00715B-17

20171682\_\_

1161 action in any manner where there is reasonable cause to believe  
1162 that election misconduct has occurred and reviewing secret  
1163 ballots cast at a vote of the association.

1164 Section 9. Section 718.71, Florida Statutes, is created to  
1165 read:

1166 718.71 Financial reporting.—An association shall provide an  
1167 annual report to the department containing the names of all of  
1168 the financial institutions with which it maintains accounts, and  
1169 a copy of such report may be obtained from the department upon  
1170 written request of any association member.

1171 Section 10. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

1682

Bill Number (if applicable)

Topic Condos

Amendment Barcode (if applicable)

Name Leah A. Simms

Job Title Arbitrator

Address 2750 St. Augustine Rd D-32

Phone 305-310-5282

1911 Lakeside FL 32301  
City State Zip

Email leahsimms324@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/4/17  
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1682  
Bill Number (if applicable)

Topic Condominium

Amendment Barcode (if applicable)

Name William Sklar

Job Title Florida Bar Real Property, Probate & Trust Law - Chair-Condo

Address 215 S. Monroe Street Phone 561-634-4953

Tallahassee FL 32301  
City State Zip

Email wsklar@carltonfields.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Bar

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

4-4-2017  
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1682  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title \_\_\_\_\_

Address 106 E College Ave #1200  
Street  
Tallahassee FL 32301  
City State Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Cyber Citizens

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

1682  
Bill Number (if applicable) \_\_\_\_\_

Topic MIAMI - DADE COUNTY

Amendment Barcode (if applicable) \_\_\_\_\_

Name COMMISSIONER JOSE 'PEPE' DIAZ

Job Title \_\_\_\_\_

Address 111 NW 1<sup>ST</sup> ST 3<sup>RD</sup> FLOOR

Phone 305-375-5124

Street

MIAMI

City

State

33128

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing MIAMI - DADE COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

4/4/2017  
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1682  
Bill Number (if applicable)

Topic Condo's

Amendment Barcode (if applicable)

Name ~~Commissioner~~ Commissioner Jackson

Job Title Commissioner

Address 1801 S. Treasure Dr  
Street

Phone 808-348-6858

North Bay Village, FL 33141  
City State Zip

Email andrea.jackson@stn.fl

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing ~~I represent a community where~~ North Bay Village

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Bill Number (if applicable) 1682

Topic \_\_\_\_\_

Amendment Barcode (if applicable) \_\_\_\_\_

Name JESS McCARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1<sup>st</sup> St 2810

Phone 305-979-7110

Street

MIAMI

City

33128

State

Zip

Email JESS.McCARTY@MIAMIDADE.FL.GOV

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

1682

Bill Number (if applicable)

Topic Condos

Amendment Barcode (if applicable)

Name Terri L Jones

Job Title \_\_\_\_\_

Address 8405 Olde Post Road  
Street

Phone 321-537-5673

Tallahassee FL 32311  
City State Zip

Email tljonespa@bellsoth.net

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

1682

Bill Number (if applicable)

636490

Amendment Barcode (if applicable)

Topic Condominiums

Name TRAVIS MOORE

Job Title \_\_\_\_\_

Address P.O. Box 2020  
Street

Phone 727.421.6902

St. Petersburg FL 33731  
City State Zip

Email travis@moore-relations.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Community Associations Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

Senate Bill 1682

Proposed amendment from Terri L. Jones and Leah A. Simms as private citizens. This proposal is not presented on behalf of DBPR or CTMH.

1. Changes the title of Arbitrator to Community Association Hearing Officer. Most citizens are not familiar with the term "arbitrator" but they understand the term "hearing officer" and that a document coming from a hearing officer deserves serious consideration. Citizens are often confused whether an arbitrator is a person who makes final decisions or a mediator who tries to help parties settle disputes. The confusion leads citizens to lose valuable property rights by not properly responding to Orders issued by an "arbitrator". Also a state hearing officer may hold more weight with a state attorney when deciding to pursue a case.
2. Sets qualifications for community association hearing officer. This assures the public will have quality hearing officers. All of the current arbitrators meet the proposed requirements. These disputes relate to people's homes. The purpose is to give homeowners quick but quality adjudication of their disputes. It also assures that a hearing officer will not be intimidated by the prospect of being terminated.
3. Adds sanctions. This gives the arbitrator authority to impose monetary sanctions on the board members and officers who intentionally prevent an association from complying with Chapters 718, 719 and 720. Also lawyers are held to the same standards held by the courts about putting forth frivolous claims or defenses. It also requires the hearing officer to refer any evidence of a criminal violation to the appropriate state attorney.
4. Deletes changes to the recall statute: Although the recall changes may prevent some current frauds, it may encourage others. For instance, if a bad board is recalled what is keeping them from filling out their own fraudulent recall, sending the association into a spiral of never ending recalls. The sanctions section should put an end to frivolous objections to recalls.
5. Adds disputes related to notice, meeting and official records for HOAs to DBPR jurisdiction. Expand Section 718.1225 jurisdiction to include HOA meetings and records requests. Right now, HOAs under Chapter 720, are "pay as you go" for HOA election disputes. Meaning the petitioner's pay a \$200 filing fee and then the parties reimburse the Division the actual costs of the arbitrations. There is no reason why meeting and record violations should not be handled in the same way.

Currently HOA homeowners would be out of pocket an average of \$1,000 just to get into court. The best way to prevent fraud is for the homeowners to get access to the association's records and to an unrestricted pathway to attend meetings of their boards.

6. The other sections that would need to be amended to reflect only the change in the terminology: 718.112(2)(j)3; 718.117(16); 719.106(1)(f)3; 720.303(10)(d); 720.311(1); and 723.078(2)(i).

Contact: Terri L. Jones - Phone: (321) 537-5673. Email: tljonespa@bellsouth.net  
Leah A. Simms - Phone: 305-310-5282

Delete stricken language on Pg 25 , line 724 through 819

Delete all of Section 3, line 824 through 1021 and insert

Section 718.1255, Florida Statutes, is amended to read:

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

**(4) Mandatory nonbinding arbitration and mediation of disputes.**--The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall employ full-time attorneys to act as community association hearing officers ~~arbitrators~~ to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as community association hearing officers upon mutual agreement of the parties ~~arbitrator~~ to conduct the arbitration hearings provided by this section. No person may be employed or certified by the department as a full-time community association hearing officer ~~arbitrator~~ unless he or she is a member in good standing of The Florida Bar for at least 5 years, and has at a minimum of 2 years experience in the fields of community association, real estate or land use law. The Division shall employ a chief community association hearing officer who shall, in addition to being a member in good standing of The Florida Bar for at least 5 years, have a minimum of 3 years of experience in the field of community association law. A community association hearing officer may only be terminated from employment or decertified for cause. The department shall adopt rules of procedure to govern such arbitration hearings including mediation incident thereto. The decision of a community association hearing officer ~~an arbitrator~~ shall be final; however, a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the community association hearing officer ~~arbitrator~~ shall be admissible in evidence in the trial de novo or any criminal proceeding.

n. Sanctions. The community association hearing officer may impose sanctions pursuant this Chapter.

1. If the community association hearing officer has cause to find that a board member or officer has intentionally prevented an association with complying with Chapter 718, 719 or 720, the arbitrator shall:

a. Serve the board member or officer with an order to show cause why sanctions should not be imposed against him or her.

b. If the board member or officer does not respond by the date specified by the community association hearing officer, no hearing will be necessary.

c. If the board member does respond, the community association hearing officer shall hold a hearing on whether sanctions should be imposed on the board member personally.

2. If the community association hearing officer finds that a board member or officer has intentionally prevented an association from complying with Chapter 718, 719 or 720, he or she may impose one or more of the following sanctions:

a. Require the board member or officer to reimburse the association for any prevailing party attorney fees or costs imposed against it.

b. Require the board member or officer to reimburse the association for its own attorney's fees and costs.

c. Require the board member or officer to reimburse the association for any damages award assessed against it.

d. If the sanction is not paid by the date specified by the community hearing officer, the association shall impose the amount owed as a lien against the board member or officer's unit or units.

3. If the community association hearing officer finds that an attorney knew or should have known that a claim or defense when initially presented to the community association hearing officer or at any time during the arbitration that a claim or defense was frivolous, the attorney may be sanctioned pursuant to Section 57.105, Florida Statutes.

4. If the community hearing officers finds that there is evidence of a criminal violation, the community hearing officer shall refer the evidence to the appropriate state attorney.

Section 720.311(1) is amended to read:

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for arbitration or the serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department pursuant to s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(j) and 718.1255 and the rules adopted by the division. In addition, the department shall conduct mandatory nonbinding ~~binding~~ arbitration of election qualified disputes between a member and an association pursuant to s. 718.1255 and rules adopted by the division. "Qualified dispute" means any disagreement between two or more parties that involves the failure of a governing body, when required by this chapter or an association document, to: properly conduct elections; give adequate notice of meetings or other actions; properly conduct meetings; and, allow inspection of books and records. Neither election qualified disputes nor recall disputes are eligible for presuit mediation; these disputes shall be arbitrated by the department. At the conclusion of the proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least \$200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney's fees in an amount found reasonable by the community association hearing officer. The department shall adopt rules to effectuate the purposes of this section.

**The Florida Senate**  
State Senator René García  
36<sup>th</sup> District

**Please reply to:**

☐ **District Office:**

1490 West 68 Street  
Suite # 201  
Hialeah, FL. 33014  
Phone# (305) 364-3100

March 28<sup>th</sup>, 2017

The Honorable Travis Hutson  
Chairman, Committee on Regulated Industries  
330 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Senator Hutson,

Please have this letter serve as my formal request to have **SB 1682: Condominiums** be heard during the next scheduled Regulated Industries Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García  
District 36

CC: Ross McSwain  
Lynn Koon

# CourtSmart Tag Report

**Room:** EL 110  
**Caption:** Senate Regulated Industries

**Case No.:**  
**Judge:**

**Type:**

**Started:** 4/4/2017 4:01:54 PM  
**Ends:** 4/4/2017 5:51:41 PM **Length:** 01:49:48

4:01:52 PM	Call to order
4:02:24 PM	Quorum is present
4:03:04 PM	SB 830 by Senator Baxley
4:03:23 PM	Sen. Baxley to explain the bill
4:03:46 PM	Amendment barcode 591686 by Sen. Baxley
4:03:58 PM	Sen. Baxley to explain the amendment
4:04:21 PM	Amendment is adopted
4:04:26 PM	Questions on the bill as amended
4:04:31 PM	Anthony DiMarco waives in support
4:04:38 PM	Warren Husband waives in support
4:04:45 PM	Sean Stafford waives in support
4:04:55 PM	Sen. Baxley waives close
4:05:00 PM	CS for SB 830 is reported favorably
4:05:23 PM	SB 1370 by Senator Perry
4:05:40 PM	Sen. Perry to explain the bill
4:05:50 PM	Sen. Gibson with a series of questions
4:09:18 PM	Bill Bunkley waives in support
4:09:28 PM	Amber Kelly waives in support
4:09:35 PM	Sen. Gibson in debate on the bill
4:10:32 PM	Sen. Perry to close on the bill
4:10:57 PM	SB 1370 is reported favorably
4:11:23 PM	SB 1372 by Senator Perry
4:11:30 PM	Sen. Perry to explain the bill
4:11:38 PM	Amendment barcode 519914 by Sen. Perry
4:12:04 PM	Sen. Perry to explain the amendment
4:12:10 PM	Amendment is adopted
4:12:15 PM	Questions on the bill as amended
4:12:23 PM	David Shepp waives in support
4:12:33 PM	Sen. Perry waives close
4:12:38 PM	CS for SB 1372 is reported favorably
4:13:13 PM	SB 822 by Senator Hutson
4:13:19 PM	Sen. Hutson to explain the bill
4:13:54 PM	Sen. Hutson waives close
4:13:59 PM	SB 822 is reported favorably
4:14:36 PM	SB 1520 by Senator Latvala
4:14:48 PM	Sen. Latvala to explain the bill
4:14:55 PM	Amendment barcode 403398 by Sen. Latvala
4:15:07 PM	Sen. Latvala to explain the amendment
4:16:42 PM	Sen. Brandes with a question
4:17:05 PM	Amendment is adopted
4:17:11 PM	Questions on the bill as amended
4:17:19 PM	Sen. Latvala to close on the bill
4:17:43 PM	CS for SB 1520 is reported favorably
4:18:19 PM	SB 294 by Senator Bracy
4:18:30 PM	Sen. Bracy to explain the bill
4:19:22 PM	Questions on the bill
4:19:26 PM	Sen. Steube with a series of questions
4:20:25 PM	Melanie Bostick waives in support
4:20:30 PM	Richard Pinsky waives in support
4:20:37 PM	Debate on the bill
4:20:40 PM	Sen. Brandes in debate on the bill
4:21:12 PM	Sen. Bracy to close on the bill

4:21:25 PM SB 294 is reported favorably  
4:22:14 PM SB 750 by Senator Latvala  
4:22:21 PM Sen. Latvala to explain the bill  
4:22:32 PM Amendment barcode 826202 by Sen. Latvala  
4:22:49 PM Sen. Latvala to explain the amendment  
4:28:10 PM Chair Hutson with a series of questions  
4:29:43 PM Sen. Gibson with a question  
4:31:18 PM Arun Kundra speaking in support of the amendment  
4:32:11 PM Jay Patel waives in support  
4:32:39 PM Nash Patel waives in support  
4:32:49 PM Henry Patel speaking in support  
4:34:51 PM Jan Gautam waives in support  
4:34:59 PM Danny Gackwad waives in support  
4:35:13 PM Edwin Shanahan speaking in support  
4:39:48 PM Sen. Thurston with a series of questions  
4:46:16 PM Sen. Steube with a series of questions  
4:47:55 PM Sen. Brandes with a series of questions  
4:50:03 PM Amendment is adopted  
4:50:19 PM Questions on the bill as amended  
4:50:25 PM Sen. Thurston with a series of questions  
4:52:53 PM Jeff Hanscom speaking in opposition  
4:57:11 PM Sen. Benacquisto with a question  
4:58:15 PM Sen. Gibson with a series of questions  
5:02:48 PM Sen. Thurston with a series of questions  
5:06:11 PM Sen. Young moves for a time-certain vote at 5:25 p.m.  
5:06:22 PM Marilyn Buck speaking in opposition  
5:08:08 PM Lani Binnie waives in opposition  
5:08:15 PM Chris Holmes speaking in opposition  
5:11:55 PM Matt Holms speaking in opposition  
5:13:40 PM Melissa Fausz speaking in opposition  
5:15:04 PM Debate on the bill  
5:15:10 PM Sen. Gibson in debate on the bill  
5:16:37 PM Sen. Thurston in debate  
5:18:19 PM Sen. Latvala to close on the bill  
5:21:01 PM CS for SB 750 is reported favorably  
5:21:56 PM SB 1682 by Senator Garcia  
5:22:03 PM Sen. Garcia to explain the bill  
5:26:27 PM Amendment barcode 636490 by Sen. Garcia  
5:26:45 PM Sen. Garcia to explain the amendment  
5:27:46 PM Travis Moore speaking on information  
5:31:11 PM Debate on the amendment  
5:31:14 PM Amendment is adopted  
5:31:20 PM Questions on the bill as amended  
5:31:37 PM Terri Jones speaking on information  
5:36:21 PM Jess McCarty waives in support  
5:36:46 PM Commissioner Jackson speaking in support  
5:37:15 PM Jose Diaz speaking in support  
5:38:41 PM Richard Pinsky speaking in support  
5:39:45 PM William Sklar speaking in opposition  
5:40:33 PM Leah Simms speaking on information  
5:47:46 PM Debate on the bill  
5:47:49 PM Sen. Brandes in debate on the bill  
5:48:03 PM Sen. Steube in debate on the bill  
5:48:33 PM Sen. Thurston in debate on the bill  
5:48:49 PM Sen. Garcia to close on the bill  
5:50:09 PM CS for SB 1682 is reported favorably  
5:50:53 PM Sen. Bracy motions to show affirmative voting  
5:51:22 PM Sen. Braynon motions to show affirmative voting  
5:51:32 PM Meeting adjourned