

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

**REGULATED INDUSTRIES**  
**Senator Bradley, Chair**  
**Senator Margolis, Vice Chair**

**MEETING DATE:** Tuesday, February 2, 2016  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Bradley, Chair; Senator Margolis, Vice Chair; Senators Abruzzo, Bean, Braynon, Diaz de la Portilla, Flores, Latvala, Negron, Richter, Sachs, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 790</b> Lee (Identical H 607)	State Lottery; Providing a limitation on the number of scratch-off games available for sale by the Department of the Lottery; providing a limitation on the sales price of lottery tickets, etc.  RI      02/02/2016 Fav/CS FT AP	Fav/CS Yeas 8 Nays 2
2	<b>SB 1292</b> Ring (Compare H 667, CS/H 1405, S 1532)	Community Associations; Requiring certain condominium, cooperative, and homeowners' associations to provide financial reports to the Division of Florida Condominiums, Timeshares, and Mobile Homes under certain circumstances; deleting a provision authorizing certain associations to prepare a report of cash receipts and expenditures in lieu of certain financial statements, etc.  RI      02/02/2016 Fav/CS JU FP	Fav/CS Yeas 11 Nays 0
3	<b>SB 336</b> Richter (Compare CS/CS/H 79)	Property Insurance Appraisals; Creating provisions relating to property insurance appraisers and property insurance appraisal umpires; creating the property insurance appraiser and property insurance appraisal umpire licensing program within the Department of Financial Services; authorizing the department to issue a license as a property insurance appraiser or a property insurance appraisal umpire upon receipt of an application, etc.  RI      02/02/2016 Not Considered BI AP	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Regulated Industries

Tuesday, February 2, 2016, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1050</b> Brandes (Identical H 1187, Compare CS/CS/H 535, S 704)	Regulated Professions and Occupations; Deleting a requirement that yacht and ship brokers maintain a separate license for each branch office and related fees; repealing provisions relating to the licensure of athlete agents; excluding the practices of hair wrapping and body wrapping from regulation under the Florida Cosmetology Act; revising the process by which a business organization obtains the requisite license to perform architectural services, etc.  RI 02/02/2016 Fav/CS AGG AP	Fav/CS Yeas 11 Nays 0
5	<b>SB 720</b> Hutson (Similar CS/H 559)	Self-storage Facilities; Providing that advertisement of a sale or disposition of property may be in any commercially reasonable manner; specifying when advertising may be considered to have been conducted in a commercially reasonable manner; providing that a self-storage facility owner is not required to have a license to post property for online sale; deleting a required alternative form of advertisement; providing options for the disposition of motor vehicles or watercraft claimed to be subject to a lien, etc.  JU 12/01/2015 Favorable RI 02/02/2016 Temporarily Postponed FP	Temporarily Postponed
6	<b>SB 392</b> Margolis (Identical H 1107)	Alcoholic Beverages; Defining the term "powdered alcohol"; prohibiting the sale, offer for sale, purchase, use, offer for use, or possession of powdered alcohol; providing penalties; providing an exemption for the use of powdered alcohol by specified entities for research purposes; providing an exemption for the possession of powdered alcohol solely for the purpose of transportation through this state by specified entities, etc.  RI 02/02/2016 Favorable CM RC	Favorable Yeas 10 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Regulated Industries

Tuesday, February 2, 2016, 1:30—3:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 1122</b> Hays (Identical H 1375, Compare CS/H 1357, S 1716)	Homeowners' Associations; Revising the uses of the Florida Condominiums, Timeshares, and Mobile Homes Trust Fund to include reimbursement of costs to the Division of Florida Condominiums, Timeshares, and Mobile Homes for the administration and operation of the Homeowners' Association Act; requiring the community association manager, the management firm, or the association to annually provide a specified report beginning on a specified date, and to resubmit the report under certain circumstances to the Division of Florida Condominiums, Timeshares, and Mobile Homes; authorizing the department to enforce and ensure compliance with the Homeowners' Association Act and specified rules, etc.  RI 02/02/2016 Unfavorable JU AP	Unfavorable Yeas 4 Nays 6
8	<b>SB 764</b> Hays (Identical H 633)	Public Food Service Establishments; Revising the definition of the term "public food service establishment" to exclude certain events; clarifying that a food service license is not required to be obtained if an event is excluded under the definition of the term "public food service establishment", etc.  HP 01/26/2016 Favorable RI 02/02/2016 Favorable FP	Favorable Yeas 11 Nays 0

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Other Related Meeting Documents

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**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 790

INTRODUCER: Regulated Industries Committee and Senator Lee

SUBJECT: State Lottery

DATE: February 3, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Caldwell	RI	Fav/CS
2.			FT	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 790 requires the Department of the Lottery (department) to adopt rules concerning the conduct of lottery games that limit:

- The number of scratch-off games available for sale at any one time to 20 or fewer; and
- The sales price of lottery tickets to ten dollars or less.

The department offers for sale both draw games and scratch-off games. Draw games allow players to select from a range of numbers on a play slip. Draw game tickets are printed by terminals that are connected to the department's gaming system for a drawing at a later time. Scratch-off game tickets have a latex covering that players scratch off to determine instantly whether they have won a prize.

In its consideration of the bill as originally filed (sales price of lottery tickets limited to five dollars or less), the Revenue Estimating Impact Conference estimated the reduction in funds to be transferred to the Educational Enhancement Trust Fund by the department would be reduced by \$263.6 million in Fiscal Year 2016-2017.

The bill provides for a July 1, 2016, effective date.

## II. Present Situation:

### The Florida Lottery

Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of the Florida Constitution<sup>1</sup> are prohibited in Florida by s. 7, Art. X of the State Constitution. However, s. 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 state lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens,”<sup>2</sup> for the benefit of public education.<sup>3</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>4</sup> Retailers receive commissions of 5 percent of the ticket price, 1 percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.<sup>5</sup> Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.<sup>6</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>7</sup> Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. There is a general prohibition against contracting with a retailer with a felony criminal history,<sup>8</sup> and the authority to act as a retailer for lottery sales may not be transferred.<sup>9</sup> Retailer contracts may be suspended or terminated for: (1) violating lottery laws and regulations; (2) committing any act that undermines public confidence in the lottery; (3) improper accounting for lottery tickets, revenues, or prizes; or (4) insufficient ticket sales. Every retailer contract must provide for a payment of liquidated damages for any contract breach by the retailer.<sup>10</sup>

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<sup>1</sup> The Constitution of the State of Florida was revised in 1968 and ratified by the electorate on November 5, 1968. *See* Preamble to the Constitution of the State of Florida.

<sup>2</sup> *See* s. 24.104, F.S.

<sup>3</sup> *See* s. 24.121(2), F.S.

<sup>4</sup> *See* s. 24.105(17), F.S.

<sup>5</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*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> at page 2 (last accessed Jan. 31, 2016).

<sup>6</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, (January 2015), (hereinafter referred to as *OPPAGA Report 15-03*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last accessed Jan. 31, 2016), at page 1 (footnote 3).

<sup>7</sup> *See* Section 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>8</sup> Section 24.112(3)(c), F.S.

<sup>9</sup> Section 24.112(4), F.S.

<sup>10</sup> Section 24.112(10), F.S.

Retailers may not extend credit or lend money to a person to purchase a lottery ticket, however, the prohibition does not include 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), provided that the lottery ticket purchase is in addition to the purchase of other goods and services with a cost of not less than \$20.<sup>11</sup>

Section 24.115, F.S., authorizes the department to establish by rule a system to verify and pay winning lottery tickets:<sup>12</sup>

- Any lottery retailer, as well as any lottery department office, may redeem a winning ticket valued at less than \$600.<sup>13</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 lottery department office may redeem a winning ticket valued at \$600 or more.<sup>14</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>15</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.

If a valid claim is not timely made, 80% of the unclaimed prize amount is deposited in the Educational Enhancement Trust Fund,<sup>16</sup> and the remainder may be used for future prizes or special prize promotions.<sup>17</sup>

Section 24.105(9)(a), F.S., authorizes the department to adopt rules governing the types of lottery games to be conducted, including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”<sup>18</sup>

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<sup>11</sup> Section 24.118(1), F.S.

<sup>12</sup> See Rule 53ER13-31, F.A.C.

<sup>13</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>14</sup> Mega Millions<sup>®</sup> and Powerball<sup>®</sup> 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>15</sup> See s. 24.115(1)(f), F.S.

<sup>16</sup> Section 24.115(2)(a), F.S., provides that such funds may be used, subject to legislative appropriation, to match private contributions received under specified post-secondary matching grant programs.

<sup>17</sup> See s. 24.115(2)(b), F.S.

<sup>18</sup> Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, L.O.F., 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).

The department introduced full service vending machines (FSVMs) in retail stores across the state in November 2013, and estimated that it earned more than \$29 million from the use of player-activated FSVMs in Fiscal Year 2012-2013.<sup>19</sup> In its most recent Financial Audit,<sup>20</sup> the department stated when 500 FSVMs were installed at its top scratch-off ticket sales locations, allowing both terminal and scratch-off tickets to be sold, total FSVMs sales were over \$248 million.

### The Seminole Gaming Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a compact governing gambling (Gaming Compact) at the Tribe's seven tribal facilities in Florida.<sup>21</sup> The Gaming Compact authorizes the Tribe to conduct Class III gaming.<sup>22</sup> It was ratified by the Legislature, with an effective date of July 6, 2010.<sup>23</sup> The Gaming Compact has a 20-year term.

The Gaming Compact provides that in exchange for the its exclusive right to offer slot machine gaming outside of Miami-Dade and Broward counties and banked card games at five of its seven<sup>24</sup> casinos, the Tribe will make revenue sharing payments to the state. The state's share increases incrementally from 12% for the first \$2 billion in annual net win, to 25% for annual net win greater than \$4.5 billion. In Fiscal Year 2013-2014, the Tribe paid \$237 million.<sup>25</sup>

The Gaming Compact specifically acknowledges operation by the Florida Lottery of the types of lottery games authorized under chapter 24, F.S., on February 1, 2010, and it specifically excludes

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<sup>19</sup> *OPPAGA Report 14-06*, *supra* note 5, at 2.

<sup>20</sup> See *Financial Audit of the Department of the Lottery, for the Fiscal Years Ended June 30, 2014, and 2013*, Report No. 2015-092, State of Florida Auditor General (January 2015), at page 4 (2015 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 accessed Jan. 31, 2016).

<sup>21</sup> The Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida* (Gaming Compact) was approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. See [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last accessed Jan. 31, 2016). Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq.*

<sup>22</sup> The Indian Gaming Regulatory Act of 1988 divides gaming into three classes: **Class I** means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations. **Class II** includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law. **Class III** includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

<sup>23</sup> See ch. 2010-29, L.O.F.

<sup>24</sup> See the executed Gaming Compact at [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last accessed Jan. 31, 2016). The Gaming Compact provides that banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games, as set forth in paragraph F.2. of Part III of the Gaming Compact, at page 4. In addition, in paragraph B of Part XVI, at page 49, the period of authorization to conduct table games is five years. A mediation process is being pursued by the Tribe and Governor Scott on this and other issues. See <http://miami.cbslocal.com/2015/08/25/state-seminoles-headed-into-mediation-over-blackjack/> (last accessed Jan. 31, 2016).

<sup>25</sup> See the Executive Summary and Conference results from the Revenue Estimating Conference (July 14, 2015 and August 11, 2015) at <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf> and <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf> (last accessed Jan. 31, 2016).

from such authorized games any “player-activated or operated machine or device other than a Lottery Vending Machine.”<sup>26</sup> The Gaming Compact also includes language about not using a lottery vending machine to redeem winning tickets, which is consistent with similar language in s. 24.112(15)(c), F.S.<sup>27</sup>

The Gaming Compact provides that any expanded gaming (beyond what is specifically acknowledged) relieves the Tribe of its obligations to make substantial revenue sharing payments.<sup>28</sup>

### **OPPAGA Recommendations to Enhance Lottery Earnings**

Section 24.123, F.S., requires the Legislature’s Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an annual financial audit of the Department of the Lottery and provide recommendations to enhance the state lottery’s earning capability and operational efficiency.<sup>29</sup> In the last two years, OPPAGA has issued Report No. 14-06, concerning options available to the department to enhance revenues,<sup>30</sup> and Report No. 15-03, concerning increases in lottery revenues, further enhancement options, and options to increase efficiency.<sup>31</sup>

No monies from the General Revenue Fund are appropriated to the department, which is supported solely by game ticket sales. For Fiscal Year 2013-2014, the Legislature appropriated \$163.5 million for operations from lottery revenue, with 420 positions authorized.<sup>32</sup> In Fiscal Year 2014-2015, the department allocated approximately 75 percent, or \$122.5 million, of its \$163.5 million appropriation to produce and advertise online and scratch-off games.<sup>33</sup>

<sup>26</sup> In particular, the Gaming Compact acknowledges: “operation by the Florida Department of Lottery of those types of lottery games authorized under chapter 24, Florida Statutes, on February 1, 2010, but not including (i) any player-activated or operated machine or device other than a lottery vending machine or (ii) any banked or banking card or table game.” The Gaming Compact further excludes: (iii) more than ten lottery vending machines at any facility or location or (iv) any lottery vending machine that dispenses electronic instant tickets at any licensed pari-mutuel location. See subparagraph 8 of paragraph B of Part XII of Gaming Compact at page 42. The Gaming Compact describes three types of lottery vending machines, none of which may allow a player to redeem a ticket: (1) a machine to dispense pre-printed paper instant lottery tickets (e.g., scratch-off tickets); (2) a machine to dispense pre-determined electronic instant lottery tickets and reveal the outcome; or (3) a machine to dispense paper lottery tickets with numbers selected by the player or randomly by the machine, with the winning number selected in a drawing by the department. See paragraph R of Part III of Gaming Compact at page 10.

<sup>27</sup> Section 24.112(15)(c), F.S., provides that a vending machine that dispenses a lottery ticket “may dispense change to a purchaser but may not be used to redeem any type of winning lottery ticket.”

<sup>28</sup> See last sentence in paragraph B of Part XII of Gaming Compact at page 43.

<sup>29</sup> See <http://www.oppaga.state.fl.us/ReportsByAgency.aspx?agency=Lottery.%20Department%20of%20the> (last visited Jan. 31, 2016) for a list of OPPAGA reports related to the Department of the Lottery.

<sup>30</sup> See *OPPAGA Report 14-06*, at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> (last accessed Nov. 2, 2015).

<sup>31</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, (January 2015), (hereinafter referred to as *OPPAGA Report 15-03*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last accessed Jan. 31, 2016).

<sup>32</sup> *Id.* at page 10.

<sup>33</sup> *Id.* at page 2.



OPPAGA reported that the department enhanced its product mix by adding a second higher-priced (\$25) scratch-off game (100X the Cash) in September 2013, following the success of the Millionaire (\$25) scratch-off game. The department expanded the variety of ticket pricing offered for the Cash game, including \$1 (5X the Cash), \$2 (10X the Cash), \$5 (20X the Cash), and \$10 (50X the Cash) versions, and estimated these games resulted in approximately \$51.9 million in transfers to the Educational Enhancement Trust Fund for Fiscal Year 2013-2014.<sup>34</sup>

OPPAGA noted that the department attributes some of its sales increases to changes in how major corporate retailers re-stock scratch-off tickets. In 2014, Publix approved an automatic replenishment program for ordering scratch-off products in all its grocery stores replacing more cumbersome procedures.<sup>35</sup>

In addition to funding the operational appropriation, lottery revenue is used to pay prizes and retailer commissions.<sup>36</sup> In Fiscal Year 2013-2014, prizes totaled \$3.43 billion, and retailer commissions totaled \$297.3 million.<sup>37</sup>

### Scratch-off Games

The department's legislatively-approved performance standards are reported in its long-range program plan.<sup>38</sup> In that plan, the department noted that it set a new all-time sales record in Fiscal Year 2014-2015 with sales above \$5.58 billion, exceeding those in the prior year by more than \$215 million and resulting in a transfer of \$1.481 billion to the Educational Enhancement Trust Fund.

In its plan, the department noted:

The Florida Lottery's success was a result of the agency's continued efforts to expand and revise its roster of games. During FY 2014-15, the Scratch-Off sales-breaking year was driven by 40 new Scratch-Off games including our third \$25 game, \$10,000,000 Florida Cash; the Jackpot, Gold Rush, and Week for Life families of games; Loteria; and the Home Depot licensed property game. Three new terminal games were introduced including changing the MEGA MONEY game to LUCKY MONEY with EZmatch, the MONOPOLY MILLIONAIRES CLUB multi-state game, and the 1-OFF play type on PLAY 4 and CASH 3.

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<sup>34</sup> *Id.* In October 2013, the Multi-State Lottery Association also enhanced the Mega Millions draw game, with larger starting jackpots, faster growing jackpots, a million-dollar second prize, and better odds of winning any prize for a \$1 ticket; those enhancements generated approximately \$6 million in transfers to the Educational Enhancement Trust Fund in Fiscal Year 2013-2014. *See also* <http://www.megamillions.com/faqs> (last visited Jan. 31, 2016).

<sup>35</sup> *Id.* Before the procedural change, the scratch-off ticket stocking process occurred when: (1) telemarketers from the department's scratch-off ticket vendor (Scientific Games) contacted each store by phone to inquire whether the store needed to re-stock; (2) the retailer called Scientific Games to place an order; or (3) a department representative noticed low inventory while on a sales call and called Scientific Games to place an order on behalf of the retailer.

<sup>36</sup> *See* s. 24.121(2) and (3), F.S.

<sup>37</sup> *Id.* at page 1.

<sup>38</sup> *See* <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13562&DocType=PDF> (last accessed Jan. 31, 2016).

To attract new players and build loyalty with current players, the Lottery offered promotions such as FLORIDA LOTTO Cruise for Cash Collect & Win, FLORIDA LOTTO College Football promotion, Pro Football POWERBALL® promotion, POWERBALL Orlando Magic promotion and two EZmatch promotions for FANTASY 5 and LUCKY MONEY for Terminal games. Scratch-off games were supported with the \$50,000 Jackpot, Britto, Home Depot Dream Makeover, and Gold Rush Cash Mine second chance drawings for the Scratch-off games.<sup>39</sup>

The department reported that multiple scratch-off games with ticket prices higher than \$20 continue to rank at the top in sales for all available scratch-off games.<sup>40</sup>

The department currently offers up to 75 different scratch-off games for sale, at prices ranging from \$1 to \$25.<sup>41</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.

### III. Effect of Proposed Changes:

The bill requires the Department of the Lottery (department) to adopt rules concerning the conduct of lottery games that limit:

- The number of scratch-off games available for sale at any one time to 20 or fewer; and
- The sales price of lottery tickets to ten dollars or less.

The department offers for sale both draw games and scratch-off games. Draw games allow players to select from a range of numbers on a play slip. Draw game tickets are printed by terminals that are connected to the department's gaming system for a drawing at a later time. Scratch-off game tickets have a latex covering that players scratch off to determine instantly whether they have won a prize.

The bill provides for a July 1, 2016, effective date.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>39</sup> See *OPPAGA Report 15-03*

<sup>40</sup> See <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13562&DocType=PDF> at 16 (last accessed Jan. 31, 2016).

<sup>41</sup> See <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/page241-243.pdf> at 241 (last accessed Jan. 31, 2016).

**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 bill will limit the number of scratch-off lottery games for which tickets may be sold to 20 or fewer. Retailers and vendors may have increased administrative costs associated with game ticket inventories that must be managed so that only 20 scratch-off games are offered for sale at any one time.

**C. Government Sector Impact:**

In its consideration of the bill as originally filed (sales price of lottery tickets limited to five dollars or less), the Revenue Estimating Impact Conference estimated the reduction in funds to be transferred to the Educational Enhancement Trust Fund by the department would be reduced by \$263.6 million in Fiscal Year 2016-2017.<sup>42</sup> The department must adopt rules to limit the number of scratch-off games which may be available for sale at any one time to 20, and the price of lottery tickets to ten dollars or less.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 24.105 of the Florida Statutes.

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<sup>42</sup> See <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/page241-243.pdf> (last accessed Jan. 31, 2016).

**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 February 2, 2016:**  
CS/SB 790 limits the sales price of a lottery ticket to ten dollars or less.

- 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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By Senator Lee

24-01096-16

2016790\_\_

1                   A bill to be entitled  
2       An act relating to the state lottery; amending s.  
3       24.105, F.S.; providing a limitation on the number of  
4       scratch-off games available for sale by the Department  
5       of the Lottery; providing a limitation on the sales  
6       price of lottery tickets; providing an effective date.  
7

8   Be It Enacted by the Legislature of the State of Florida:  
9

10       Section 1. Paragraphs (a) and (b) of subsection (9) of  
11       section 24.105, Florida Statutes, are amended to read:

12       24.105 Powers and duties of department.—The department  
13       shall:

14       (9) Adopt rules governing the establishment and operation  
15       of the state lottery, including:

16       (a) The type of lottery games to be conducted, except that:

17       1. No name of an elected official shall appear on the  
18       ticket or play slip of any lottery game or on any prize or on  
19       any instrument used for the payment of prizes, unless such prize  
20       is in the form of a state warrant.

21       2. No coins or currency shall be dispensed from any  
22       electronic computer terminal or device used in any lottery game.

23       3. Other than as specifically provided in s. 24.112, no  
24       terminal or device may be used for any lottery game which may be  
25       operated solely by the player without the assistance of the  
26       retailer.

27       4. The number of scratch-off games which may be available  
28       for sale by the department at any one time may not exceed 20.

29       (b) The sales price of tickets, not to exceed \$5.

24-01096-16

2016790\_\_

30

Section 2. This act shall take effect July 1, 2016.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations, *Chair*  
Appropriations Subcommittee on General  
Government  
Banking and Insurance  
Reapportionment  
Rules

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

**SENATOR TOM LEE**

24th District

January 20, 2016

The Honorable Rob Bradley  
Committee on Regulated Industries, Chair  
208 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Bradley,

I respectfully request that SB 790, related to *State Lottery*, be placed on the Senate Committee on Regulated Industries agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Tom Lee".

Tom Lee  
Senator, District 24

Cc: Booter Imhof, Staff Director

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/2/16  
Meeting Date

SB 0790  
Bill Number (if applicable)

Topic Lotto

Amendment Barcode (if applicable)

Name Jason Smith

Job Title Cable Splicer

Address 6603 E Chelsea  
Street

Phone 813-626-5136

Tampa FL 33610  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing IBEW Local 824

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.**



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2.2.16

Meeting Date

790

Bill Number (if applicable)

Topic STATE LOTTERY

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO Box 341644

Phone 813.264.2977

Street

TAMPA

City

FL

State

33694

Zip

Email

Speaking:  For  Against  Information

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

Representing FLORIDA ETHICS AND 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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2.2.16

Meeting Date

790

Bill Number (if applicable)

Topic STATE LOTTERY

Amendment Barcode (if applicable)

Name AMBER KELLY

Job Title LEGISLATIVE AFFAIRS

Address 4853 S ORANGE AVE

Phone 407-418-0250

Street

ORLANDO FL 32806

City

State

Zip

Email \_\_\_\_\_

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)





372440

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2016	.	
	.	
	.	
	.	

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The Committee on Regulated Industries (Flores) recommended the following:

**Senate Amendment**

Delete line 29

and insert:

(b) The sales price of tickets, not to exceed \$10.

**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.)

---

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

---

BILL: CS/SB 1292

INTRODUCER: Regulated Industries Committee and Senator Ring

SUBJECT: Community Associations

DATE: February 2, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Caldwell	RI	<b>Fav/CS</b>
2.			JU	
3.			FP	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1292 amends the provisions for financial statements for condominium, cooperative, and homeowners' associations in ss. 718.111(13), 719.104(4), and 720.303(7), F.S., respectively.

The bill provides a process for when an association fails to provide a unit or parcel owner with a copy of the financial report after a written request. The bill requires that unit and parcel owners may contact the division that the association has failed to provide a copy of the financial report. The bill requires that the division contact the association to request that a copy of the financial report must be provided to the unit or parcel owner within five business days. If the association fails to provide a copy of the financial report to the unit or parcel owner, it must provide a copy of the financial report to the division within seven business days.

The bill deletes the provision that requires associations of fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### Division of Florida Condominiums, Timeshares, and Mobile Homes

Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation administers the provisions of chs. 718 and 719, F.S., F.S., for condominium and cooperative associations, respectively. 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.<sup>1</sup> The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association.<sup>2</sup> After control of the condominium 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>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 (fines) 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., or 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 practice and to take affirmative action to carryout the purpose of the applicable chapter. The division may also petition the court to appoint a receiver or conservator to implement a court order, or to enforce of an injunction or temporary restraining order. The division may also 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

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

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

<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.*

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.

### **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>7</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>8</sup> A declaration is like 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>9</sup>

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."<sup>10</sup> A declaration of condominium may be amended as provided in the declaration.<sup>11</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 the owners of two-thirds of the units.<sup>12</sup> Condominiums are administered by a board of directors referred to as a "board of administration."<sup>13</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

---

<sup>7</sup> Section 718.103(11), F.S.

<sup>8</sup> Section 718.104(2), F.S.

<sup>9</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>10</sup> Section 718.104(5), F.S.

<sup>11</sup> *See* s. 718.110(1)(a), F.S.

<sup>12</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>13</sup> Section 718.103(4), F.S.

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>14</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>15</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 condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."<sup>16</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>17</sup>

Homeowners' associations are administered by a board of directors whose members are elected.<sup>18</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>19</sup> The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>20</sup>

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

Although condominiums and cooperatives are regulated by the FCTMH division, homeowners' associations are not regulated. 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 requirements for the governance of these associations. For example, the chapters delineate requirements for notices of meetings,<sup>21</sup> recordkeeping requirements, including which records are

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<sup>14</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>15</sup> See s. 720.302(1), F.S.

<sup>16</sup> Section 720.301(9), F.S.

<sup>17</sup> Section 720.302(5), F.S.

<sup>18</sup> See ss. 720.303 and 720.307, F.S.

<sup>19</sup> See ss. 720.301 and 720.303, F.S.

<sup>20</sup> Section 720.303(1), F.S.

<sup>21</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.



accessible to the members of the association,<sup>22</sup> and financial reporting.<sup>23</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

### **Financial Reporting**

Sections 718.11(13), 719.104(4), and 720.303(7), provide the financial reporting requirements for condominium, cooperative, and homeowners’ associations, respectively. These provisions for these associations 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.

Associations may not waive the financial reporting requirements for more than three consecutive years.

An association having total annual revenues between \$150,000 and less than \$300,000 must prepare compiled financial statements.<sup>24</sup> An association having total annual revenues of at least \$300,000 but less than \$500,000 must prepare reviewed financial statements.<sup>25</sup> An association having total revenues of \$500,000 or more must prepare audited financial statements.<sup>26</sup>

An association with total annual revenue of less than \$150,000 must prepare a report of cash receipts and expenditures.

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.

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<sup>22</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>23</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>24</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 GAAP. Compiled financial statements must conform to the 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>25</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>26</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

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:**

The bill amends the provisions for financial statements for condominium, cooperative, and homeowners' associations in ss. 718.111(13), 719.104(4), and 720.303(7), F.S., respectively.

The bill requires that unit and parcel owners may contact the division that the association has failed to provide a copy of the financial report after the member has made a written request. The bill requires that the division contact the association to request that a copy of the financial report must be provided to the unit or parcel owner within five business days. If the association fails to provide a copy of the financial report to the unit or parcel owner, it must provide a copy of the financial report to the division within seven business days.

If the association fails to provide the unit or parcel owner with a copy of the financial report, the association must provide the division with a copy of the financial report for the subsequent two years and must notify the unit and parcel owners that a copy of the report has been filed with the division.

The bill deletes the provision that requires associations of fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures.

Current law and the bill do not authorize the division to investigate or enforce violations of ch. 720, F.S., by homeowners' associations.

The bill provides an effective date of July 1, 2016.

### **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:**

Associations of fewer than 50 units or parcels, regardless of the association's annual revenues, would be required to prepare a compiled, reviewed, or audited financial statement instead of a report of cash receipts and expenditures.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.)

**CS by Regulated Industries Committee on February 2, 2016:**

The committee substitute (CS) creates ss. 718.111(13)(e), 719.104(4)(e), and 720.303(7)(e), F.S., to provide a unit or parcel owner may contact the division to report that the association has failed to provide a copy of the financial report after a written request from the unit or parcel owner. The CS then requires the division to contact the association to request that a copy of the financial report must be provided to the unit or parcel owner within five business days. If the association fails to provide a copy of the financial report, it must provide a copy of the financial report to the division within seven business days. The bill decreases from three years to two years the number of years that the association must provide a copy of the financial report to the due to failure to provide a copy of the financial report. The CS also requires that the association must notify the unit and parcel owners that a copy of the report has been filed with the division.

The CS does not prohibit associations from waive a financial reporting requirement if they fail to timely provide unit or parcel owners with a copy of the financial report.

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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By Senator Ring

29-00219A-16

20161292\_\_

1                   A bill to be entitled  
2           An act relating to community associations; amending  
3           ss. 718.111, 719.104, and 720.303, F.S.; requiring  
4           certain condominium, cooperative, and homeowners'  
5           associations to provide financial reports to the  
6           Division of Florida Condominiums, Timeshares, and  
7           Mobile Homes under certain circumstances; deleting a  
8           provision authorizing certain associations to prepare  
9           a report of cash receipts and expenditures in lieu of  
10          certain financial statements; providing an effective  
11          date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15           Section 1. Subsection (13) of section 718.111, Florida  
16           Statutes, is amended to read:

17           718.111 The association.—

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

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

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

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

61 2. An association with total annual revenues of at least

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20161292\_\_

62 \$300,000, but less than \$500,000, shall prepare reviewed  
63 financial statements.

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

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

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

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

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

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

90 2. Reviewed or audited financial statements, if the

29-00219A-16

20161292\_\_

91 association is required to prepare compiled financial  
92 statements; or

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

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

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

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

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

106

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



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120 unit is recorded, whichever occurs first. Thereafter, all unit  
121 owners except the developer may vote on such issues until  
122 control is turned over to the association by the developer. Any  
123 audit or review prepared under this section shall be paid for by  
124 the developer if done before turnover of control of the  
125 association. An association may not waive the financial  
126 reporting requirements of this section for more than 3  
127 consecutive years.

128 Section 2. Subsection (4) of section 719.104, Florida  
129 Statutes, is amended to read:

130 719.104 Cooperatives; access to units; records; financial  
131 reports; assessments; purchase of leases.—

132 (4) FINANCIAL REPORT.—

133 (a) Within 90 days following the end of the fiscal or  
134 calendar year or annually on such date as provided in the bylaws  
135 of the association, the board of administration shall prepare  
136 and complete, or contract with a third party to prepare and  
137 complete, a financial report covering the preceding fiscal or  
138 calendar year. Within 21 days after the financial report is  
139 completed by the association or received from the third party,  
140 but no later than 120 days after the end of the fiscal year,  
141 calendar year, or other date provided in the bylaws, the  
142 association shall provide each member with a copy of the annual  
143 financial report or a written notice that a copy of the  
144 financial report is available upon request at no charge to the  
145 member. Upon notification by a member to the division that the  
146 association has not provided the member with a copy of the  
147 financial report upon request as required under this subsection,  
148 the association must provide the member with a copy of the

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149 financial report. If the association fails to do so, the  
150 association must provide the division with a copy of the  
151 financial report for the next 3 years and may not waive a  
152 financial reporting requirement as provided in paragraph (b) or  
153 paragraph (e). The division shall adopt rules setting forth  
154 uniform accounting principles, standards, and reporting  
155 requirements.

156 (b) Except as provided in paragraph (c), an association  
157 whose total annual revenues meet the criteria of this paragraph  
158 shall prepare or cause to be prepared a complete set of  
159 financial statements according to the generally accepted  
160 accounting principles adopted by the Board of Accountancy. The  
161 financial statements shall be as follows:

162 1. An association with total annual revenues between  
163 \$150,000 and \$299,999 shall prepare a compiled financial  
164 statement.

165 2. An association with total annual revenues between  
166 \$300,000 and \$499,999 shall prepare a reviewed financial  
167 statement.

168 3. An association with total annual revenues of \$500,000 or  
169 more shall prepare an audited financial statement.

170 4. The requirement to have the financial statement  
171 compiled, reviewed, or audited does not apply to an association  
172 if a majority of the voting interests of the association present  
173 at a duly called meeting of the association have voted to waive  
174 this requirement for the fiscal year. In an association in which  
175 turnover of control by the developer has not occurred, the  
176 developer may vote to waive the audit requirement for the first  
177 2 years of operation of the association, after which time waiver

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178 of an applicable audit requirement shall be by a majority of  
179 voting interests other than the developer. The meeting shall be  
180 held prior to the end of the fiscal year, and the waiver shall  
181 be effective for only one fiscal year. An association may not  
182 waive the financial reporting requirements of this section for  
183 more than 3 consecutive years.

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

187 ~~2. An association in a community of fewer than 50 units,~~  
188 ~~regardless of the association's annual revenues, shall prepare a~~  
189 ~~report of cash receipts and expenditures in lieu of the~~  
190 ~~financial statements required by paragraph (b), unless the~~  
191 ~~declaration or other recorded governing documents provide~~  
192 ~~otherwise.~~

193 2.3. A report of cash receipts and expenditures must  
194 disclose the amount of receipts by accounts and receipt  
195 classifications and the amount of expenses by accounts and  
196 expense classifications, including the following, as applicable:  
197 costs for security, professional, and management fees and  
198 expenses; taxes; costs for recreation facilities; expenses for  
199 refuse collection and utility services; expenses for lawn care;  
200 costs for building maintenance and repair; insurance costs;  
201 administration and salary expenses; and reserves, if maintained  
202 by the association.

203 (d) If at least 20 percent of the unit owners petition the  
204 board for a greater level of financial reporting than that  
205 required by this section, the association shall duly notice and  
206 hold a membership meeting within 30 days after receipt of the

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207 petition to vote on raising the level of reporting for that  
208 fiscal year. Upon approval by a majority of the voting interests  
209 represented at a meeting at which a quorum of unit owners is  
210 present, the association shall prepare an amended budget or  
211 shall adopt a special assessment to pay for the financial report  
212 regardless of any provision to the contrary in the declaration  
213 or other recorded governing documents. In addition, the  
214 association shall provide within 90 days after the meeting or  
215 the end of the fiscal year, whichever occurs later:

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

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

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

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

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

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

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

235 Section 3. Subsection (7) of section 720.303, Florida

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236 Statutes, is amended to read:

237 720.303 Association powers and duties; meetings of board;  
238 official records; budgets; financial reporting; association  
239 funds; recalls.—

240 (7) FINANCIAL REPORTING.—Within 90 days after the end of  
241 the fiscal year, or annually on the date provided in the bylaws,  
242 the association shall prepare and complete, or contract with a  
243 third party for the preparation and completion of, a financial  
244 report for the preceding fiscal year. Within 21 days after the  
245 final financial report is completed by the association or  
246 received from the third party, but not later than 120 days after  
247 the end of the fiscal year or other date as provided in the  
248 bylaws, the association shall, within the time limits set forth  
249 in subsection (5), provide each member with a copy of the annual  
250 financial report or a written notice that a copy of the  
251 financial report is available upon request at no charge to the  
252 member. Upon notification by a member to the division that the  
253 association has not provided the member with a copy of the  
254 financial report upon request as required under this subsection,  
255 the association must provide the member with a copy of the  
256 financial report. If the association fails to do so, the  
257 association must provide the division with a copy of the  
258 financial report for the next 3 years and may not waive a  
259 financial reporting requirement as provided in paragraph (d).  
260 Financial reports shall be prepared as follows:

261 (a) An association that meets the criteria of this  
262 paragraph shall prepare or cause to be prepared a complete set  
263 of financial statements in accordance with generally accepted  
264 accounting principles as adopted by the Board of Accountancy.

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265 The financial statements shall be based upon the association's  
266 total annual revenues, as follows:

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

270 2. An association with total annual revenues of at least  
271 \$300,000, but less than \$500,000, shall prepare reviewed  
272 financial statements.

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

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

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

283 2.3. A report of cash receipts and disbursement must  
284 disclose the amount of receipts by accounts and receipt  
285 classifications and the amount of expenses by accounts and  
286 expense classifications, including, but not limited to, the  
287 following, as applicable: costs for security, professional, and  
288 management fees and expenses; taxes; costs for recreation  
289 facilities; expenses for refuse collection and utility services;  
290 expenses for lawn care; costs for building maintenance and  
291 repair; insurance costs; administration and salary expenses; and  
292 reserves if maintained by the association.

293 (c) If 20 percent of the parcel owners petition the board

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294 for a level of financial reporting higher than that required by  
295 this section, the association shall duly notice and hold a  
296 meeting of members within 30 days of receipt of the petition for  
297 the purpose of voting on raising the level of reporting for that  
298 fiscal year. Upon approval of a majority of the total voting  
299 interests of the parcel owners, the association shall prepare or  
300 cause to be prepared, shall amend the budget or adopt a special  
301 assessment to pay for the financial report regardless of any  
302 provision to the contrary in the governing documents, and shall  
303 provide within 90 days of the meeting or the end of the fiscal  
304 year, whichever occurs later:

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

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

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

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

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

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

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

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323 of an audited financial statement.

324 Section 4. This act shall take effect July 1, 2016.





# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Governmental Oversight and Accountability, *Chair*  
Judiciary, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Children, Families, and Elder Affairs  
Commerce and Tourism

**JOINT COMMITTEE:**

Joint Select Committee on Collective Bargaining

**SENATOR JEREMY RING**

29th District

January 12, 2016

Honorable Senator Rob Bradley, Chair  
Committee on Regulated Industries  
330 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Bradley,

I am writing to respectfully request your cooperation in placing Senate Bill 1292, relating to Community Associations, on the Regulated Industries agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator District 29

cc: Patrick Imhof, Staff Director  
Lynn Koon, Committee Administrative Assistant

**REPLY TO:**

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-2-16

Meeting Date

SB 1292

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name Bill Wohlsifer, Esq.

Job Title Lobbyist

Address 1100 E. Park Ave, Ste. B

Phone 850-219-8888

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking:  For  Against  Information

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

Representing William R. Wohlsifer, PA

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-2-16

Meeting Date

1292

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name Jennifer Green

Job Title Managing Partner

Address 113 East College Ave

Phone 528-8809

Street

Tallahassee FL 32301

City

State

Zip

Email jennifer@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.

The Florida Senate  
**COMMITTEE VOTE RECORD**

**COMMITTEE:** Regulated Industries  
**ITEM:** SB 1292  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, February 2, 2016  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** 110 Senate Office Building

FINAL VOTE			2/02/2016 1 Amendment 908458		2/02/2016 2 Motion to vote "YEA" after Roll Call			
Yea	Nay	SENATORS	Richter Yea	Nay	Abruzzo Yea	Nay	Yea	Nay
VA		Abruzzo						
X		Bean						
X		Braynon						
		Diaz de la Portilla						
X		Flores						
X		Latvala						
X		Negron						
X		Richter						
X		Sachs						
X		Stargel						
X		Margolis, VICE CHAIR						
X		Bradley, CHAIR						
11	0		RCS	-	FAV	-		
<b>Yea</b>	<b>Nay</b>	<b>TOTALS</b>	<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>	<b>Yea</b>	<b>Nay</b>

CODES: FAV=Favorable      RCS=Replaced by Committee Substitute      TP=Temporarily Postponed      WD=Withdrawn  
 UNF=Unfavorable      RE=Replaced by Engrossed Amendment      VA=Vote After Roll Call      OO=Out of Order  
 -R=Reconsidered      RS=Replaced by Substitute Amendment      VC=Vote Change After Roll Call      AV=Abstain from Voting



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2016	.	
	.	
	.	
	.	

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The Committee on Regulated Industries (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (b) of subsection (13) of section  
718.111, Florida Statutes, is amended, and paragraph (e) is  
added to that subsection to read:

718.111 The association.—

(13) FINANCIAL REPORTING.—Within 90 days after the end of  
the fiscal year, or annually on a date provided in the bylaws,



11 the association shall prepare and complete, or contract for the  
12 preparation and completion of, a financial report for the  
13 preceding fiscal year. Within 21 days after the final financial  
14 report is completed by the association or received from the  
15 third party, but not later than 120 days after the end of the  
16 fiscal year or other date as provided in the bylaws, the  
17 association shall mail to each unit owner at the address last  
18 furnished to the association by the unit owner, or hand deliver  
19 to each unit owner, a copy of the financial report or a notice  
20 that a copy of the financial report will be mailed or hand  
21 delivered to the unit owner, without charge, upon receipt of a  
22 written request from the unit owner. The division shall adopt  
23 rules setting forth uniform accounting principles and standards  
24 to be used by all associations and addressing the financial  
25 reporting requirements for multicondominium associations. The  
26 rules must include, but not be limited to, standards for  
27 presenting a summary of association reserves, including a good  
28 faith estimate disclosing the annual amount of reserve funds  
29 that would be necessary for the association to fully fund  
30 reserves for each reserve item based on the straight-line  
31 accounting method. This disclosure is not applicable to reserves  
32 funded via the pooling method. In adopting such rules, the  
33 division shall consider the number of members and annual  
34 revenues of an association. Financial reports shall be prepared  
35 as follows:

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

39 ~~2. An association that operates fewer than 50 units,~~



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40 ~~regardless of the association's annual revenues, shall prepare a~~  
41 ~~report of cash receipts and expenditures in lieu of financial~~  
42 ~~statements required by paragraph (a).~~

43 2.3. A report of cash receipts and disbursements must  
44 disclose the amount of receipts by accounts and receipt  
45 classifications and the amount of expenses by accounts and  
46 expense classifications, including, but not limited to, the  
47 following, as applicable: costs for security, professional and  
48 management fees and expenses, taxes, costs for recreation  
49 facilities, expenses for refuse collection and utility services,  
50 expenses for lawn care, costs for building maintenance and  
51 repair, insurance costs, administration and salary expenses, and  
52 reserves accumulated and expended for capital expenditures,  
53 deferred maintenance, and any other category for which the  
54 association maintains reserves.

55 (e) If an association has not provided the unit owner with  
56 a copy of the financial report within the time required pursuant  
57 to this section, after receipt of a written request from the  
58 unit owner, the unit owner may notify the division of the  
59 association's failure to provide the financial report. The  
60 division shall contact the association to request the  
61 association to provide the copy of the financial report to the  
62 unit owner within 5 working days after notification to the  
63 division by the unit owner. If the association further fails to  
64 provide the copy of the financial report, the association shall  
65 be required to provide a copy of the financial report to the  
66 division within 7 working days after such notification.  
67 Additionally, the association shall provide a copy of the  
68 financial report to the division for the 2 subsequent fiscal



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69 years within 21 days after the final financial report is  
70 completed by the association or received from the third party  
71 and shall notify the unit owners that the financial report has  
72 been filed with the division. The division shall maintain the  
73 financial reports and provide a copy of the financial reports to  
74 members of the public upon request.

75 Section 2. Paragraph (c) of subsection (4) of section  
76 719.104, Florida Statutes, is amended, and paragraph (f) is  
77 added to that subsection to read:

78 719.104 Cooperatives; access to units; records; financial  
79 reports; assessments; purchase of leases.-

80 (4) FINANCIAL REPORT.-

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

84 ~~2. An association in a community of fewer than 50 units,~~  
85 ~~regardless of the association's annual revenues, shall prepare a~~  
86 ~~report of cash receipts and expenditures in lieu of the~~  
87 ~~financial statements required by paragraph (b), unless the~~  
88 ~~declaration or other recorded governing documents provide~~  
89 ~~otherwise.~~

90 2.3. A report of cash receipts and expenditures must  
91 disclose the amount of receipts by accounts and receipt  
92 classifications and the amount of expenses by accounts and  
93 expense classifications, including the following, as applicable:  
94 costs for security, professional, and management fees and  
95 expenses; taxes; costs for recreation facilities; expenses for  
96 refuse collection and utility services; expenses for lawn care;  
97 costs for building maintenance and repair; insurance costs;





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98 administration and salary expenses; and reserves, if maintained  
99 by the association.

100 (f) If an association has not provided the unit owner with  
101 a copy of the financial report within the time required as  
102 provided in paragraph (a), after receipt of a written request  
103 from the unit owner, the unit owner may notify the division of  
104 the association's failure to provide the financial report. The  
105 division shall contact the association to request the  
106 association to provide the copy of the financial report to the  
107 unit owner within 5 working days after notification to the  
108 division by the unit owner. If the association further fails to  
109 provide the copy of the financial report, the association shall  
110 be required to provide a copy of the financial report to the  
111 division within 7 working days after such notification.  
112 Additionally, the association shall provide a copy of the  
113 financial report to the division for the 2 subsequent fiscal  
114 years within 21 days after the final financial report is  
115 completed by the association or received from the third party  
116 and shall notify the unit owners that the financial report has  
117 been filed with the division. The division shall maintain the  
118 financial reports and provide a copy of the financial reports to  
119 members of the public upon request.

120 Section 3. Paragraph (b) of subsection (7) of section  
121 720.303, Florida Statutes, is amended, and paragraph (e) is  
122 added to that subsection to read:

123 720.303 Association powers and duties; meetings of board;  
124 official records; budgets; financial reporting; association  
125 funds; recalls.—

126 (7) FINANCIAL REPORTING.—Within 90 days after the end of



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127 the fiscal year, or annually on the date provided in the bylaws,  
128 the association shall prepare and complete, or contract with a  
129 third party for the preparation and completion of, a financial  
130 report for the preceding fiscal year. Within 21 days after the  
131 final financial report is completed by the association or  
132 received from the third party, but not later than 120 days after  
133 the end of the fiscal year or other date as provided in the  
134 bylaws, the association shall, within the time limits set forth  
135 in subsection (5), provide each member with a copy of the annual  
136 financial report or a written notice that a copy of the  
137 financial report is available upon request at no charge to the  
138 member. Financial reports shall be prepared as follows:

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

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

147 ~~2.3.~~ A report of cash receipts and disbursement must  
148 disclose the amount of receipts by accounts and receipt  
149 classifications and the amount of expenses by accounts and  
150 expense classifications, including, but not limited to, the  
151 following, as applicable: costs for security, professional, and  
152 management fees and expenses; taxes; costs for recreation  
153 facilities; expenses for refuse collection and utility services;  
154 expenses for lawn care; costs for building maintenance and  
155 repair; insurance costs; administration and salary expenses; and



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156 reserves if maintained by the association.

157 (e) If an association has not provided the unit owner with  
158 a copy of the financial report within the time required pursuant  
159 to this section, after receipt of a written request from the  
160 unit owner, the unit owner may notify the division of the  
161 association's failure to comply. The division shall contact the  
162 association to request the association to provide the copy of  
163 the financial report to the unit owner within 5 full business  
164 days after notification to the division by the unit owner. If  
165 the association further fails to provide the copy of the  
166 financial report, the association shall be required to provide a  
167 copy of the financial report to the division within 7 full  
168 business days after such notification. Additionally, the  
169 association shall provide a copy of the financial report to the  
170 division for the 2 subsequent fiscal years within 21 days after  
171 the final financial report is completed by the association or  
172 received from the third party and shall notify the unit owners  
173 that the financial report has been filed with the division. The  
174 division shall maintain the financial reports and provide a copy  
175 of the financial reports to members of the public upon request.

176 Section 4. This act shall take effect July 1, 2016.

177  
178 ===== T I T L E A M E N D M E N T =====

179 And the title is amended as follows:

180 Delete everything before the enacting clause  
181 and insert:

182 A bill to be entitled  
183 An act relating to community associations; amending  
184 ss. 718.111, 719.104, and 720.303, F.S.; deleting a



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185 provision authorizing certain associations to prepare  
186 a report of cash receipts and expenditures in lieu of  
187 specified financial statements; requiring certain  
188 condominium, cooperative, and homeowners' associations  
189 to provide financial reports to the Division of  
190 Florida Condominiums, Timeshares, and Mobile Homes  
191 under certain circumstances; providing an effective  
192 date.

**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 336

INTRODUCER: Senator Richter

SUBJECT: Property Insurance Appraisals

DATE: January 28, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Caldwell	RI	<b>Pre-meeting</b>
2.	_____	_____	BI	_____
3.	_____	_____	AP	_____

---

**I. Summary:**

SB 336 provides for the licensing and regulation of property insurance appraisers and umpires by the Department of Financial Services. Property insurance contracts often contain “appraisal” provisions. Appraisal provisions are used when the parties agree that there is a covered loss but disagree as to the amount of the loss. Such provisions typically provide that each party select an appraiser. The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the amount of the loss, the insurer pays the claim. If they do not agree, the umpire resolves the dispute. Current law does not limit or restrict who may act as an umpire and does not provide a method for either party to challenge whether an umpire is fair and impartial.

The bill provides the education and experience qualifications to be an appraiser and an appraisal umpire. The bill provides fees, including a nonrefundable \$50 application fee, a \$5 initial license fee, and a \$60 biennial renewal and appointment fee. The fees for appraisers and appraisal umpires are identical. The bill provides continuing education requirements, and provides grounds for the discipline of a license, and ethical standards for appraisers and appraisal umpires.

**II. Present Situation:**

**Property Insurance Appraisers and Umpires**

Property insurance contracts often contain “appraisal” provisions. Appraisal provisions are used when the parties agree that there is a covered loss but disagree as to the amount of the loss.<sup>1</sup> Such provisions typically provide that each party select an appraiser. The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the

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<sup>1</sup> See Fla.Jur. Insurance §3292.

amount of the loss, the insurer pays the claim. If they do not agree, the umpire resolves the dispute.<sup>2</sup> Current law does not limit or restrict who may act as an umpire and does not provide a method for either party to challenge whether an umpire is fair and impartial.

### **Public Adjusters**

A public adjuster is a person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.<sup>3</sup> The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim. Public adjusters are licensed by the Department of Financial Services (department) and must meet specified age, residency, examination, and surety bond requirements.<sup>4</sup> The conduct of a public adjuster is governed by statute and by rule.<sup>5</sup> A company employee adjuster (known as a "company adjuster") performs the same services as a public adjuster except he or she is employed by the insurer.<sup>6</sup>

### **The Sunrise Act**

Florida does not license or regulate property insurance appraisal umpires and property insurance appraisers.

A proposal for new regulation of a profession must meet the requirements in s. 11.62, F.S., the Sunrise Act. The act prohibits:

- Subjecting a profession or occupation to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; or
- Regulating a profession or occupation by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, s. 11.62, F.S., requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

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<sup>2</sup> *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla.3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal provisions.

<sup>3</sup> Section 626.854(1), F.S.

<sup>4</sup> Section 626.865, F.S.

<sup>5</sup> See generally, ss. 626.854, 626.8698, 626.876, 626.878, 626.8795, and 626.8796, F.S., and Rule 69B-220, F.A.C.

<sup>6</sup> Section 626.856, F.S.

- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice, or who are practicing, a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62, F.S., requires the proponents of regulation to submit information, which is structured as a sunrise questionnaire to document that the regulation meets these criteria. A response to a sunrise questionnaire was prepared by the proponents of the legislation to assist the Legislature in determining the need for regulation.

The response submitted by the proponents of the bill, the Insurance Appraisers and Umpires Association (IAUA),<sup>7</sup> states that the unregulated profession poses a substantial harm to the public health, safety, or welfare. In pertinent part, the response provides:

Currently, the state licenses adjusters in three categories, company adjuster, independent adjuster and public adjuster, if an individual is unable to pass these tests, or if they lose their license, they are able to become an insurance property appraisers and/or an insurance property umpire with no regulation. Further, convicted felons are able to become insurance property appraisers and/or insurance property umpires.

The Courts have ruled that a decision of the insurance appraisal panel (any 2 of the 3 members of the panel) is binding on the parties unless fraud is involved, (appraisals are for the dollar amount of the insurance loss and the panels are not empowered to determine coverage).

In the past, the public has been harmed when roofers, contractors and non-insurance people are involved and they don't properly appraise the amount of damages, for example, roofers have been known to appraise the roof of a home only without considering the interior of a home thus injuring the public in that they don't receive the proper insurance funds for the interior of their home and thus they fail to repair the interior making the damages worse and affecting the value of the home.

### **III. Effect of Proposed Changes:**

The bill creates part XIV of ch. 626, F.S., to provide for the regulation of property insurance appraisal umpires (appraisal umpires) and property insurance appraisers (appraisers).

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<sup>7</sup> More information about the Insurance Appraisers and Umpires Association is available at: <http://www.iaua.us/about-iaua.aspx> (last visited March 13, 2015).

## Property Insurance Appraisal Umpire Licensing Program

The bill creates s. 626.9961, F.S., to create the property insurance appraisal umpire and appraiser licensing program within the department. It provides that part XIV of ch. 626, F.S., applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process. It also authorizes the department to adopt rules to administer part XIV of ch. 626, F.S.

### Definitions

The bill creates s. 626.9962, F.S., to define the terms “appraisal,” “competent,” “department,” “independent,” “property insurance appraisal umpire,” “umpire,” “property insurance appraiser,” and “appraiser.”

The bill defines the term “appraisal” to mean:

the process of dispute resolution, as defined in the property insurance contract, which determines the amount of loss when the insurer and insured are unable to agree on the amount of the loss, or, if the insurer has elected to repair the property and the insurer and the insured are unable to agree on the scope of repairs, the scope of repairs. Appraisal occurs after coverage is established.

The bill defines the terms “property insurance appraisal umpire” or “umpire” to mean:

a third party selected by appraisers representing the insurer and the insured who is charged with resolving issues that the appraisers are unable to agree upon during the course of an appraisal process conducted pursuant to a residential, commercial residential, or commercial property insurance contract that provides for resolution of claim disputes by appraisal.

The bill defines the terms “property insurance appraiser” or “appraiser” to mean a:

a third party selected by an insurer or an insured to develop an appraisal under a residential, commercial residential, or commercial property insurance contract that provides for resolution of claim disputes by appraisal.

### Fees

The bill creates s. 626.9963, F.S., to delineate the following maximum fees for an appraiser appraisal umpires:

- Application: \$50 (nonrefundable);
- Initial license: \$5;
- Biennial appointment and appointment renewal: \$60; and
- Continuing education provider designation: \$100 per course.



The bill does not provide a maximum amount for the examination fee. The bill provides that the fee must be sufficient to cover the actual cost of the examination and reexamination.

The bill requires that fees must be deposited in the Insurance Regulatory Trust Fund.

### **License Application Process and Qualifications**

The bill creates s. 626.9964, F.S., to provide the application process for an appraiser or appraisal umpire license. An applicant must submit a written application under oath. The bill sets forth the personal identifying information that must be included in the application along with the application fee. The applicant must also be fingerprinted, and the fingerprints must be submitted by the department to the Florida Department of Law Enforcement for a state and federal criminal history records check.

The bill requires that the department develop and maintain as a public record a current list of licensed property insurance appraisers and appraisal umpires.

Section 626.9964(6), F.S., provides the qualifications to be an appraiser or appraisal umpire. It requires that the applicant must be of good moral character, and meet the qualification requirements set forth in this section.

To be licensed as an appraiser or appraisal umpire a person must be:

- A retired county, circuit, or appellate judge;
- An engineer as defined in s. 471.005, F.S., or as a retired professional engineer as defined in s. 471.005, F.S.;
- A general contractor, building contractor, or residential contractor pursuant to part I of ch. 489, F.S.;
- An architect licensed to engage in the practice of architecture pursuant to part I of ch. 481, F.S.;
- A Florida-licensed attorney; or
- A property and casualty adjuster licensed under part VI of 626, F.S.

To qualify, the property and casualty adjuster must have been licensed for at least 5 years as an adjuster before he or she may be licensed as an appraisal umpire.

In addition to meeting the license requirements, an individual must be:

- Trustworthy and competent;
- A natural person who is at least 18 years of age; and
- A United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

The bill provides that an incomplete application expires six months after the date it is received by the department.

The bill provides that an applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

### **Licensure by Endorsement**

The bill creates s. 626.9965, F.S., to permit the department to license by endorsement any person who the department certifies is qualified to practice as an appraiser or umpire. However, it prohibits the department from issuing a license by endorsement to any applicant who is under investigation in another state for any act that would constitute a violation of part XIV of ch. 626, F.S., until such time that the investigation is complete and disciplinary proceedings have been terminated.

### **Appointment of License**

The bill creates s. 626.9966, F.S., to require an appraiser or umpire to appoint himself or herself to undertake the duties of an appraiser or umpire with the department in order to practice in the state. The fee for appointment and biennial renewal of appointment is \$60, as provided in s. 626.9963, F.S. The purpose of this provision is unclear. As defined in s. 626.015, F.S., the term “appointment” means the authority given by an insurer or employer to a licensee to transact insurance or adjust claims on behalf of an insurer or employer. The practice of a licensee appointing themselves is inconsistent with this definition.

### **Continuing Education**

The bill creates s. 626.9967, F.S., to require appraiser and umpire licensees to submit to the department, as a condition of renewal of the license, satisfactory proof that, during the 2 years before his or her application for renewal, the licensee completed at least 24 hours of department-approved continuing education.

Appraiser continuing education course providers, instructors, and classroom courses must be approved by and registered with the department before the courses may be offered. The bill authorizes the department to adopt rules for the approval of course providers and instructors.

The bill prohibits an approved instructor from teaching any course that is outside the scope of part XIV of ch. 626, F.S. The effect of this provision is unclear but it appears to prohibit an approved instructor from teaching any other courses in subjects outside the scope of an appraiser or umpire. For example, the bill appears to prohibit a licensed architect, who is approved to teach a continuing education course for appraisers and umpires, from teaching a course directed for architects under ch. 481, F.S.

### **Partnerships, Corporations, and Other Business Entities**

The bill creates s. 626.9968, F.S., to permit appraiser and umpire licensees to practice through a partnership, corporation, or other business entity that is registered with the department. A corporation or other business entity may not hold a license to practice property insurance

appraisal or umpire services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of its agents, employees, or officers.

### **Grounds for Compulsory Refusal, Suspension, or Revocation of a License**

The bill creates s. 626.9969, F.S., to provide the grounds for the compulsory denial of an application, the suspension or revocation of a license, and to refuse to renew or continue a license, including committing fraud or dishonest practices in the conduct of business under the license and having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under state or federal law or any crime that involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases. An appraiser license may also be denied if he or she has had a registration, license, or certification as an umpire revoked, suspended, or otherwise acted against in Florida or any other state, any nation, or any possession or district of the United States.

### **Grounds for Discretionary Refusal, Suspension, or Revocation of a License**

The bill creates s. 626.9971, F.S., to provide the grounds for the discretionary denial of an application, the suspension or revocation of a license, and for refusal to renew or continue a license. The discretionary grounds include failure to timely communicate with the opposing party's appraiser without good cause, failure to exercise reasonable diligence, and violating any ethical standard for property insurance appraisers set forth in s. 626.9972, F.S.

A licensee may also be disciplined for failing to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

### **Ethical Standards for Appraiser**

The bill creates s. 626.9972, F.S., to provide the following ethical standards for property insurance appraisers. An appraiser must:

- Maintain confidentiality of all information revealed during an appraisal except where disclosure is required by law;
- Maintain confidentiality of records;
- Charge fees that are reasonable and consistent with the nature of the case, charge a fee based on actual time spent or allocated, charge for costs actually incurred, and not accept a fee based on a percentage basis or contingent basis.
- Maintain records necessary to support charges for services and expenses and maintain such records for at least 5 years;
- Not engage in false or misleading advertising or marketing practices;
- Not engage in any business, provide any service, or perform any act that would compromise the appraiser's or umpire's integrity or impartiality, including being available to promptly commence the service and thereafter devote his or her time to its completion in the manner expected by all involved parties;
- Decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the service is beyond the person's skill or experience;

- Not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the reasonable fee; and
- Not engage in ex parte communications.

The bill also provides that an appraiser must communicate with all parties in the manner agreed to by the parties. The bill prohibits communications in which a party dictates to an appraiser the results of the proceedings, the matters or elements that must be included or considered by the appraiser, or the actions that the appraiser may take.

### **Prohibitions and Penalties**

The bill creates s. 626.9973, F.S., to provide that, effective October 1, 2016, a person may not use the name or title “property insurance appraiser,” “appraiser,” “property insurance appraisal umpire,” or “umpire” unless he or she is licensed pursuant to part XIV or ch. 626, F.S. The bill provides that a person who violates this prohibition commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.<sup>88</sup>

### **Rulemaking Authority**

The bill creates s. 626.9974, F.S., to authorize the department to adopt rules to:

- Establish the process for determining compliance with the licensure requirements;
- Prescribe the necessary forms; and
- Implement the rulemaking authority.

### **Appropriation**

For the 2016-2017 fiscal year, section 2 of the bill appropriates \$605,874 in recurring funds and \$59,053 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Department of Financial Services for four full-time equivalent positions with associated salary rate of 212,315 are authorized, for the purpose of implementing this act.

### **Effective Date**

Except for the prohibition created in s. 626.9973, F.S., with an effective date of October 1, 2016, the bill provides an effective date of July 1, 2016.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>88</sup> Section 775.082, F.S., provides that the penalty for misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that the penalty for misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

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

None.

**C. Trust Funds Restrictions:**

None.

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

The bill creates s. 626.9963, F.S., to delineate the following maximum fees for an appraiser appraisal umpires:

- Application: \$50 (nonrefundable);
- Initial license: \$5;
- Biennial appointment and appointment renewal: \$60; and
- Continuing education provider designation: \$100 per course.

The bill provides that the examination fee must be sufficient to cover the actual cost of the examination and reexamination, but does not set a maximum amount for that fee.

**B. Private Sector Impact:**

Applicants for an appraiser license and for an appraisal umpire license would be required to pay the application and license fees specified in the bill, including the cost of fingerprinting for a criminal history records check. According to FDLE, the cost for a state and national criminal history record check is \$38.75.<sup>9</sup> Licensees would also incur costs related to compliance with the continuing education requirements.

**C. Government Sector Impact:**

According to the department, it estimates revenues from licensing fees of \$2,467,000 and expenditures of \$1,001,936 for FY 2015-2016; revenues of \$1,850,250 and expenditures of \$918,023 for FY 2016-2017; and revenues of \$2,304,500 and expenditures of \$918,203 for FY 2017-2018.

The department also indicated the need for additional FTE's to implement the new licensing requirements.

**VI. Technical Deficiencies:**

None.

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<sup>9</sup> See Criminal History Record Check Fee Schedule at: <http://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx#13> (last visited December 2, 2015).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 626.9961, 626.9962, 626.9963, 626.9964, 626.9965, 626.9966, 626.9967, 626.9968, 626.9969, 626.9971, 626.9972, 626.9973, and 626.9974.

**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.

By Senator Richter

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1                                   A bill to be entitled  
2       An act relating to property insurance appraisals;  
3       creating part XIV of ch. 626, F.S., relating to  
4       property insurance appraisers and property insurance  
5       appraisal umpires; creating s. 626.9961, F.S.;  
6       creating the property insurance appraiser and property  
7       insurance appraisal umpire licensing program within  
8       the Department of Financial Services; providing  
9       legislative purpose; providing applicability; creating  
10      s. 626.9962, F.S.; defining terms; creating s.  
11      626.9963, F.S.; authorizing the department to  
12      establish specified fees; requiring the deposit of  
13      fees into the Insurance Regulatory Trust Fund;  
14      creating s. 626.9964, F.S.; authorizing the department  
15      to issue a license as a property insurance appraiser  
16      or a property insurance appraisal umpire upon receipt  
17      of an application; requiring applications to be made  
18      under oath or affirmation and signed by the applicant;  
19      requiring applicants to include specified information  
20      in their applications; requiring that applications be  
21      submitted with applicable fees; requiring applicants  
22      to submit fingerprints to the department; providing  
23      for state and national processing of fingerprints;  
24      requiring an applicant to pay specified fingerprint  
25      processing fees; requiring the department to develop  
26      and maintain as a public record a current list of  
27      appraisers and umpires; authorizing applicants to  
28      practice in this state if they meet specified  
29      requirements; requiring the department to review and

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30 approve continuing education courses for appraisers  
31 and umpires; prohibiting the department from issuing  
32 an appraiser or umpire license to an individual found  
33 to be untrustworthy or incompetent or who fails to  
34 meet other specified requirements; providing that an  
35 incomplete application expires after a specified  
36 period; prohibiting the department from rejecting an  
37 applicant based solely upon membership or lack of  
38 membership in any particular appraisal organization;  
39 creating s. 626.9965, F.S.; authorizing the department  
40 to issue a license by endorsement to an applicant who  
41 the department certifies is qualified unless the  
42 applicant is under investigation in another state for  
43 specified acts until the investigation is complete and  
44 disciplinary proceedings have been terminated;  
45 creating s. 626.9966, F.S.; requiring licensed  
46 appraisers and umpires to appoint their respective  
47 licenses with the department; requiring appraisers and  
48 umpires to complete their appointments before  
49 undertaking the duties of an appraiser or umpire;  
50 providing that an individual who has been licensed by  
51 the department may be subsequently appointed without  
52 additional written examination if his or her  
53 application for appointment is filed with the  
54 department within a specified period; providing that  
55 an appointment continues in force until canceled,  
56 suspended, revoked, or terminated; providing for  
57 expiration of a license after a specified period;  
58 creating s. 626.9967, F.S.; requiring an appraiser or



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59           umpire to submit to the department satisfactory proof  
60           that specified continuing education requirements have  
61           been met; authorizing the department to immediately  
62           terminate or refuse to renew the appointment of an  
63           appraiser or umpire if the department does not receive  
64           such proof; requiring the department to establish by  
65           rule criteria and course content for appraisal  
66           courses; requiring each appraiser or umpire course  
67           provider, instructor, and classroom course to be  
68           approved by and registered with the department before  
69           continuing education courses may be offered; requiring  
70           the department to adopt rules establishing standards  
71           for the approval, registration, discipline, or removal  
72           from registration of course providers, instructor, and  
73           courses; prohibiting an approved instructor from  
74           teaching specified courses; creating s. 626.9968,  
75           F.S.; authorizing the practice of or the offer to  
76           practice as an appraiser or umpire by licensees  
77           through specified entities; requiring specified  
78           entities that hold themselves out as offering property  
79           insurance appraisal services to be registered with the  
80           department; providing that specified entities are not  
81           relieved of responsibility for the conduct or acts of  
82           their agents, employees, or officers; providing that  
83           an individual practicing as an appraiser or umpire is  
84           not relieved of responsibility for professional  
85           services performed as a result of employment with  
86           specified entities; creating s. 626.9969, F.S.;

87           requiring the department to deny an application for,

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88 suspend, revoke, or refuse to renew or continue the  
89 license or appointment of any applicant, property  
90 insurance appraiser, or property insurance appraisal  
91 umpire and suspend or revoke the eligibility to hold a  
92 license or appointment of any such person in certain  
93 circumstances; creating s. 626.9971, F.S.; authorizing  
94 the department to deny an application for and suspend,  
95 revoke, or refuse to renew or continue a license as an  
96 appraiser or umpire in certain circumstances; creating  
97 s. 626.9972, F.S.; requiring appraisers and umpires to  
98 maintain confidentiality of all information obtained  
99 during an appraisal; requiring appraisers and umpires  
100 to maintain confidentiality in the storage and  
101 disposal of records; prohibiting appraisers and  
102 umpires from disclosing identifying information in  
103 certain circumstances; requiring that the fees charged  
104 by an appraiser or an umpire are reasonable and  
105 consistent with the nature of the case; prohibiting an  
106 umpire from charging, agreeing to, or accepting as  
107 compensation or reimbursement any payment, commission,  
108 or fee that is based on a percentage of the appraised  
109 value or that is contingent on a specified outcome;  
110 requiring appraisers and umpires to maintain specified  
111 records and provide an accounting of applicable  
112 charges upon request; prohibiting appraisers and  
113 umpires from engaging in marketing practices that  
114 convey false or misleading information; prohibiting  
115 appraisers from accepting an appointment in certain  
116 circumstances; requiring appraisers to conduct the

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117 appraisal process in a specified manner; prohibiting  
118 umpires from engaging in any business, providing any  
119 service, or performing any act under certain  
120 circumstances; requiring appraisers and umpires to  
121 decline an appointment or selection, withdraw, or  
122 request appropriate assistance in certain  
123 circumstances; prohibiting appraisers and umpires from  
124 giving or accepting any gift, favor, loan, or other  
125 item of value in the appraisal process; prohibiting  
126 appraisers and umpires from soliciting or otherwise  
127 attempting to procure future professional services  
128 during the appraisal process; requiring appraisers to  
129 abide by any agreement they reach on the manner or  
130 content of communications between them; prohibiting  
131 appraisers from discussing a proceeding with any party  
132 or with the umpire except in specified circumstances;  
133 providing exceptions; prohibiting communications in  
134 which a party dictates to an appraiser a specified  
135 result, consideration, or action; creating s.  
136 626.9973, F.S.; prohibiting certain acts regarding  
137 appraisers or umpires; providing penalties; creating  
138 s. 626.9974, F.S.; authorizing the department to adopt  
139 rules to administer this part; providing an  
140 appropriation; providing effective dates.

141

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

143

144 Section 1. Part XIV of chapter 626, Florida Statutes,  
145 consisting of sections 626.9961 through 626.9974, is created to

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146 read:

147 PART XIV148 PROPERTY INSURANCE APPRAISERS AND PROPERTY INSURANCE APPRAISAL149 UMPIRES

150  
151 626.9961 Property insurance appraiser and property  
152 insurance appraisal umpire licensing program; legislative  
153 purpose; scope of part.-

154 (1) The property insurance appraiser and property insurance  
155 appraisal umpire licensing program is created within the  
156 Department of Financial Services.

157 (2) The Legislature finds it necessary to regulate persons  
158 and companies that hold themselves out to the public as  
159 qualified to provide services as appraisers and umpires to  
160 protect the public safety and welfare, to prevent damage to real  
161 and personal property, and to avoid economic injury to the  
162 residents of this state.

163 (3) This part applies to residential, commercial  
164 residential, and commercial property insurance contracts and to  
165 the appraisers and umpires who participate in the appraisal  
166 process.

167 626.9962 Definitions.-As used in this part, the term:

168 (1) "Appraisal" means the process of dispute resolution, as  
169 defined in the property insurance contract, which determines the  
170 amount of loss when the insurer and insured are unable to agree  
171 on the amount of the loss, or, if the insurer has elected to  
172 repair the property and the insurer and the insured are unable  
173 to agree on the scope of repairs, the scope of repairs.

174 Appraisal occurs after coverage is established.

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175 (2) "Competent" means sufficiently qualified and capable of  
176 performing an appraisal.

177 (3) "Department" means the Department of Financial  
178 Services.

179 (4) "Independent" means a person who is not subject to any  
180 control, restriction, modification, or limitation by an  
181 appointing party.

182 (a) An appraiser may not represent himself or herself as an  
183 independent appraiser if he or she accepts an appointment that  
184 is contingent upon reporting a predetermined result, analysis,  
185 or opinion, or if the fee to be paid for the services of the  
186 appraiser in connection with an appointment is contingent upon a  
187 predetermined opinion, conclusion, or valuation.

188 (b) An umpire may not represent himself or herself as an  
189 independent umpire unless he or she conducts his or her  
190 investigation, evaluation, and estimation without instruction  
191 from an appointing party. An umpire is not independent if he or  
192 she accepts an appointment that is contingent upon reporting a  
193 predetermined result, analysis, or opinion or if the fee to be  
194 paid for the services of the umpire in connection with an  
195 appointment is contingent upon a predetermined opinion,  
196 conclusion, or valuation.

197 (5) "Property insurance appraisal umpire" or "umpire" means  
198 a third party selected by appraisers representing the insurer  
199 and the insured who is charged with resolving issues that the  
200 appraisers are unable to agree upon during the course of an  
201 appraisal process conducted pursuant to a residential,  
202 commercial residential, or commercial property insurance  
203 contract that provides for resolution of claim disputes by

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204 appraisal.

205 (6) "Property insurance appraiser" or "appraiser" means a  
206 third party selected by an insurer or an insured to develop an  
207 appraisal under a residential, commercial residential, or  
208 commercial property insurance contract that provides for  
209 resolution of claim disputes by appraisal.

210 626.9963 Fees.—

211 (1) The department may establish an application fee and  
212 fees for examination, reexamination, and licensure and  
213 appointment as a property insurance appraiser or a property  
214 insurance appraisal umpire, and for designation as a provider of  
215 continuing education. Fees shall be remitted at the time of  
216 application.

217 (a) The application fee is \$50 and is nonrefundable.

218 (b) The examination and reexamination fees, at a minimum,  
219 must be sufficient to cover the actual cost of examination and  
220 reexamination.

221 (c) The fee for an initial license is \$5.

222 (d) The fee for a biennial appointment and renewal of such  
223 appointment is \$60.

224 (e) The fee for applications for designation as a provider  
225 of continuing education is \$100 per course.

226 (2) Fees shall be deposited into the Insurance Regulatory  
227 Trust Fund.

228 626.9964 Application for license as a property insurance  
229 appraiser or property insurance appraisal umpire.—

230 (1) Effective October 1, 2016, upon receipt of a completed  
231 application that is made under oath and signed by the applicant,  
232 the department may issue a license as a property insurance

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233 appraiser or a property insurance appraisal umpire to a person  
234 who meets the requirements of subsection (6).

235 (2) The application for license must include the following  
236 information:

237 (a) The applicant's full name; age; social security number;  
238 residence address; business address; mailing address; contact  
239 telephone numbers, including a business telephone number; and e-  
240 mail address.

241 (b) Whether the applicant has been refused or has  
242 voluntarily surrendered or has had suspended or revoked a  
243 professional license by any state.

244 (c) Proof that the applicant meets the requirements for  
245 licensure as an appraiser or umpire under subsection (6).

246 (d) The applicant's gender.

247 (e) The applicant's native language.

248 (f) The applicant's highest achieved level of education.

249 (3) The applicant shall submit the applicable fee with his  
250 or her application.

251 (4) An applicant must submit a full set of fingerprints to  
252 the department. The department must forward the fingerprints to  
253 the Department of Law Enforcement for state processing, and the  
254 Department of Law Enforcement shall forward the fingerprints to  
255 the Federal Bureau of Investigation for national processing.  
256 Fees for state and federal fingerprint processing must be paid  
257 by the applicant. The state fee for fingerprint processing, at a  
258 minimum, must be sufficient to cover the actual costs of  
259 fingerprint processing.

260 (5) The department shall develop and maintain as a public  
261 record a current list of licensed appraisers and umpires.

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262       (6) An applicant may be licensed to practice in this state  
263 as an appraiser or umpire if he or she is of good moral  
264 character and meets one of the following requirements:

265       (a) Is a retired county, circuit, or appellate judge.

266       (b) Is licensed as an engineer pursuant to chapter 471 or  
267 is a retired professional engineer as defined in s. 471.005.

268       (c) Is licensed as a general contractor, building  
269 contractor, or residential contractor pursuant to part I of  
270 chapter 489.

271       (d) Is licensed or registered as an architect to engage in  
272 the practice of architecture pursuant to part I of chapter 481.

273       (e) Is a member of The Florida Bar.

274       (f) Is licensed as an adjuster pursuant to part VI of  
275 chapter 626, which license includes the property and casualty  
276 lines of insurance. An adjuster must have been licensed for at  
277 least 3 years as an adjuster before he or she may be licensed as  
278 an appraiser and must have been licensed for at least 5 years as  
279 an adjuster before he or she may be licensed as an umpire.

280       (7) The department shall review and approve courses of  
281 study for the continued education of appraisers and umpires.

282       (8) The department may not issue a license as an appraiser  
283 or umpire to any individual found by the department to be  
284 untrustworthy or incompetent or who:

285       (a) Has not filed an application with the department in  
286 accordance with this subsection (2).

287       (b) Is not a natural person who is at least 18 years of  
288 age.

289       (c) Is not a United States citizen or legal alien who  
290 possesses work authorization from the United States Bureau of



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291 Citizenship and Immigration Services.

292 (d) Has not completed the experience or licensing  
293 requirements of this part.

294 (9) An incomplete application expires 6 months after the  
295 date it is received by the department.

296 (10) The department may not reject an application solely  
297 because the applicant is or is not a member of a given appraisal  
298 organization.

299 626.9965 Licensure by endorsement.—The department may issue  
300 a license by endorsement to an applicant who the department  
301 certifies is qualified to practice as an appraiser or umpire  
302 unless the applicant is under investigation in this or another  
303 state for any act that would constitute a violation of this part  
304 and until the investigation is complete and disciplinary  
305 proceedings have been terminated.

306 626.9966 Appointment of license.—

307 (1) A property insurance appraiser or property insurance  
308 appraisal umpire must appoint himself or herself with the  
309 department and pay fees in the amount specified in s. 626.9963.  
310 The appraiser or umpire must complete his or her appointment  
311 before undertaking the duties of an appraiser or an umpire. The  
312 appointment of an appraiser or umpire continues in force until  
313 suspended, revoked, or terminated, as provided in this part, and  
314 is subject to biennial renewal or continuation by the licensee.

315 (2) An individual who has been licensed by the department  
316 as an appraiser or umpire may be subsequently appointed without  
317 additional written examination if his or her application for  
318 appointment is filed with the department within 48 months after  
319 the date of cancellation or expiration of the previous

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320 appointment.

321 (3) The license of an appraiser or umpire continues in  
322 force until canceled, suspended, or revoked or until it is  
323 otherwise terminated, as provided in this part, but expires by  
324 operation of law 48 months after the date of cancellation or  
325 expiration of the last appointment.

326 626.9967 Continuing education.—

327 (1) The property insurance appraiser or property insurance  
328 appraisal umpire must provide satisfactory proof to the  
329 department that, during the 2 years before his or her  
330 application for renewal, he or she completed at least 24 hours  
331 of continuing education, approved by the department and relating  
332 to appraisers and umpires, which covers new laws, ethics,  
333 disciplinary trends, case studies, industry trends, and other  
334 similar topics that the department determines are relevant to  
335 legally and ethically performing the responsibilities of an  
336 appraiser or umpire. If the department does not receive such  
337 proof, the department may immediately terminate or refuse to  
338 renew the appointment of an appraiser or umpire. The department  
339 shall establish the criteria for and content of appraisal  
340 courses by rule.

341 (2) Each appraiser or umpire course provider, instructor,  
342 and classroom course must be approved by and registered with the  
343 department before offering continuing education courses.

344 (3) The department shall adopt rules establishing standards  
345 for the approval of courses and the registration, discipline, or  
346 removal from registration of course providers and instructors.  
347 The standards adopted by the department must ensure that  
348 instructors have the knowledge, competence, and integrity to

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349 fulfill the educational objectives of this part.

350 (4) An approved instructor may not teach any course that is  
351 outside the scope of this part.

352 626.9968 Partnerships, corporations, and other business  
353 entities.—A licensee may practice or offer to practice as a  
354 property insurance appraiser or property insurance appraisal  
355 umpire through a partnership, corporation, or other business  
356 entity that offers appraisal or umpire services to the public,  
357 or through the agents, employees, or officers of, or partners in  
358 such a partnership, corporation, or business entity. However,  
359 partnerships, corporations, or other business entities that hold  
360 themselves out as offering property insurance appraisal services  
361 must be registered with the department. This section does not  
362 allow a corporation or other business entity to hold a license  
363 to practice appraisal or umpire services. A partnership,  
364 corporation, or other business entity is not relieved of  
365 responsibility for the conduct or acts of its agents, employees,  
366 or officers by reason of its compliance with this section. An  
367 individual who practices as an appraiser or umpire is not  
368 relieved of responsibility for professional services performed  
369 as a result of his or her employment or relationship with a  
370 partnership, corporation, or other business entity.

371 626.9969 Grounds for compulsory refusal, suspension, or  
372 revocation of an appraiser or umpire license.—The department  
373 shall deny an application for license under this section;  
374 suspend, revoke, or refuse to renew or continue a license or  
375 appointment of an applicant, property insurance appraiser, or  
376 property insurance appraisal umpire; or suspend or revoke  
377 eligibility for licensure or appointment as an appraiser or

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378 umpire if the department finds that one or more of the following  
379 applicable grounds exist:

380 (1) Lacking one or more of the qualifications for licensure  
381 as specified in this part.

382 (2) Making a material misstatement or misrepresentation or  
383 committing fraud in obtaining a license or in attempting to  
384 obtain a license or appointment.

385 (3) Failing to achieve a passing score, as determined by  
386 the department, on any examination required under this part.

387 (4) Willfully using a license or appointment to circumvent  
388 any of the requirements or prohibitions of this part.

389 (5) Demonstrating a lack of fitness or trustworthiness to  
390 practice as an appraiser or umpire.

391 (6) Demonstrating a lack of reasonably adequate knowledge  
392 and technical competence to conduct transactions authorized by  
393 the license.

394 (7) Committing fraudulent or dishonest practices in the  
395 conduct of business under the license.

396 (8) Willfully failing to comply with or willfully violating  
397 any order or rule of the department or this part.

398 (9) Having been found guilty of or having pled guilty or  
399 nolo contendere to a felony or a crime punishable by  
400 imprisonment of 1 year or more under federal or any state law,  
401 or under the law of any other country, which involves moral  
402 turpitude, without regard of whether a judgment or conviction  
403 has been entered by the court having jurisdiction of such cases.

404 (10) Violating a duty imposed upon him or her by law or by  
405 the terms of a contract, whether written, oral, expressed, or  
406 implied, during the course of an appraisal; aiding, assisting,

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407 or conspiring with any other person engaged in any such  
408 misconduct and in furtherance thereof; or forming the intent,  
409 design, or scheme to engage in such misconduct and committing an  
410 overt act in furtherance of such intent, design, or scheme. A  
411 licensee commits a violation of this subsection regardless of  
412 whether the victim or intended victim of the misconduct has  
413 sustained any damage or loss; the damage or loss has been  
414 settled and paid after the discovery of misconduct; or the  
415 victim or intended victim is a customer or a person in a  
416 confidential relationship with the licensee or is an identified  
417 member of the general public.

418 (11) Having a registration, license, or certification as an  
419 appraiser or umpire revoked, suspended, or otherwise acted  
420 against; having a registration, license, or certificate to  
421 practice or conduct any regulated profession, business, or  
422 vocation revoked or suspended; or having an application for such  
423 registration, licensure, or certification to practice or conduct  
424 any regulated profession, business, or vocation denied, by this  
425 or any other state, any nation, or any possession or district of  
426 the United States.

427 (12) Making or filing a report or record, written or oral,  
428 which the licensee knows to be false; willfully failing to file  
429 a report or record required by state or federal law; willfully  
430 impeding or obstructing such filing; or inducing another person  
431 to impede or obstruct such filing.

432 (13) Accepting an appointment as an appraiser or umpire if  
433 the appointment is contingent upon the appraiser or umpire  
434 reporting a predetermined result, analysis, or opinion, or if  
435 the fee to be paid for the services of the umpire is contingent

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436 upon the opinion, conclusion, or valuation reached by the  
437 umpire.

438 626.9971 Grounds for discretionary denial, suspension, or  
439 revocation of a property insurance appraiser's or property  
440 insurance appraisal umpire's license.—The department may deny an  
441 application for license or suspend, revoke, or refuse to renew  
442 or continue a license as a property insurance appraiser or  
443 property insurance appraisal umpire if any of the following  
444 occurs:

445 (1) If the licensee is, or is applying for a license to be,  
446 an appraiser, failure to timely communicate with the opposing  
447 party's appraiser without good cause or failure or refusal to  
448 exercise reasonable diligence in submitting recommendations to  
449 the opposing party's appraiser.

450 (2) If the licensee is, or is applying for a license to be,  
451 an umpire, failure to timely communicate with the appraiser  
452 representing the insurer and the insured without good cause or  
453 failure or refusal to exercise reasonable diligence in  
454 submitting recommendations to such appraisers.

455 (3) Violation of any ethical standard for appraisers and  
456 umpires specified in s. 626.9972.

457 (4) Failure to inform the department in writing within 30  
458 days after pleading guilty or nolo contendere to, or being  
459 convicted or found guilty of, a felony.

460 (5) Failure to timely notify the department of any change  
461 in business location, or failure to fully disclose all business  
462 locations from which he or she operates as an appraiser or  
463 umpire.

464 (6) Any cause for which issuance of the license or

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465 appointment could have been refused had it then existed and been  
466 known to the department.

467 (7) Violation of this part or of any other law applicable  
468 to the business of insurance in the course of his or her  
469 practice under this section.

470 (8) Violation of any order or rule of the department,  
471 commission, or office.

472 (9) Knowingly aiding, assisting, procuring, advising, or  
473 abetting any person in the violation of the insurance code or  
474 any order or rule of the department, commission, or office.

475 (10) Failure to comply with any civil, criminal, or  
476 administrative action taken by the child support enforcement  
477 program under Title IV-D of the Social Security Act, 42 U.S.C.  
478 ss. 651 et seq., to determine paternity or to establish, modify,  
479 enforce, or collect support.

480 626.9972 Ethical standards for property insurance  
481 appraisers and property insurance appraisal umpires.-

482 (1) CONFIDENTIALITY.-Unless disclosure is otherwise  
483 required by law, a property insurance appraiser or a property  
484 insurance appraisal umpire shall maintain confidentiality of all  
485 information revealed during an appraisal. However, an appraiser  
486 may disclose such information to the party who hired him or her.

487 (2) RECORDKEEPING.-An appraiser or umpire shall maintain  
488 confidentiality in the storage and disposal of records and may  
489 not disclose any identifying information if materials are used  
490 in research, training, or statistical compilations.

491 (3) FEES AND EXPENSES.-

492 (a) The fees charged by an appraiser or umpire must be  
493 reasonable and consistent with the nature of the case. In

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494 determining fees, an appraiser or umpire:

495 1. If charging on an hourly basis, may bill for services  
496 only for actual time spent on or allocated for the appraisal.

497 2. May charge for costs actually incurred, and no other  
498 costs.

499 (b) An umpire may not charge, agree to, or accept as  
500 compensation or reimbursement any payment, commission, or fee  
501 that is based on a percentage of the appraised value or that is  
502 contingent upon a specified outcome.

503 (4) MAINTENANCE OF RECORDS.—An appraiser or umpire shall  
504 maintain records necessary to support charges for services and  
505 expenses, and, upon request, shall provide an accounting of all  
506 applicable charges to the parties. An appraiser or umpire shall  
507 retain original or true copies of any contracts engaging his or  
508 her services, appraisal reports, and supporting data assembled  
509 and formulated by the licensee in preparing appraisal reports  
510 for at least 5 years. The period for retaining such records  
511 begins on the date of the submission of the appraisal report to  
512 the client. Upon reasonable notice, the records shall be made  
513 available by the licensee to the department for inspection and  
514 making copies. If an appraisal has been the subject of, or has  
515 been admitted as evidence in, a lawsuit, reports and records  
516 related to the appraisal must be retained for at least 2 years  
517 after the date that the trial ends.

518 (5) ADVERTISING.—An appraiser or umpire may not engage in  
519 marketing practices that contain false or misleading  
520 information. A licensee shall ensure that any advertisement of  
521 his or her qualifications, services to be rendered, or the  
522 appraisal process are accurate and honest. An appraiser or



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523 umpire may not make claims of achieving specific outcomes or  
524 promises implying favoritism for the purpose of obtaining  
525 business.

526 (6) INTEGRITY AND IMPARTIALITY.—

527 (a)1. An appraiser may not accept an appointment unless he  
528 or she can serve independently of the party appointing him or  
529 her; serve competently; and promptly commence the appraisal and,  
530 thereafter, devote the time and attention to its completion in  
531 the manner expected by all of the parties involved in the  
532 appraisal.

533 2. An appraiser shall conduct the appraisal process in a  
534 manner that advances the fair and efficient resolution of issues  
535 that arise during the appraisal process. An appraiser shall make  
536 all reasonable efforts to prevent delays in the appraisal  
537 process, the harassment of parties or other participants, or  
538 other abuse or disruption of the appraisal process.

539 3. After an appraiser accepts an appointment, the appraiser  
540 may not withdraw or abandon the appointment unless compelled to  
541 do so by unanticipated circumstances that would render it  
542 impossible or impracticable to continue.

543 4. An appraiser shall deliberate and decide all issues  
544 submitted for determination, but may not render a decision on  
545 any other issues. An appraiser shall decide all matters justly,  
546 exercising independent judgment. An appraiser may not delegate  
547 the duty to make a determination to any other person.

548 (b) An umpire may not engage in any business, provide any  
549 service, or perform any act that would compromise his or her  
550 integrity or impartiality.

551 (7) SKILL AND EXPERIENCE.—An appraiser or umpire shall

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552 decline an appointment or selection, withdraw, or request  
553 appropriate assistance when the facts and circumstances of the  
554 appraisal prove to be beyond his or her skill or experience.

555 (8) GIFTS AND SOLICITATION.—An appraiser or umpire may not  
556 give or accept any gift, favor, loan, or other item of value in  
557 the appraisal process. During the appraisal process, an  
558 appraiser or umpire may not solicit or otherwise attempt to  
559 procure future work with the client.

560 (9) COMMUNICATIONS WITH PARTIES.—

561 (a) If an agreement of the parties establishes the manner  
562 or content of the communications between the appointed  
563 appraisers, the affected parties, and the umpire, the appraisers  
564 shall abide by such agreement. In the absence of such an  
565 agreement, an appraiser may not discuss a proceeding with any  
566 party or with the umpire in the absence of any other party,  
567 except in the following circumstances:

568 1. If the appointment of the appraiser or umpire is being  
569 considered, the prospective appraiser or umpire may inquire  
570 about the identity of the parties, the parties' legal counsel,  
571 and the general nature of the case, and may respond to inquiries  
572 from any party or its counsel or an umpire which are designed to  
573 determine his or her suitability and availability for the  
574 appointment.

575 2. The appraiser may consult with the party who appointed  
576 him or her concerning the selection of a neutral umpire.

577 3. The appraiser may make arrangements for any compensation  
578 to be paid by the party who appointed him or her.

579 4. The appraiser may make arrangements for obtaining  
580 materials and providing for inspection of the property with the

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581 party who appointed the appraiser. Such communication is limited  
582 to scheduling and the exchange of materials.

583 (b) There may not be any communication during which a party  
584 dictates to an appraiser the outcome of the proceedings, the  
585 matters or elements that may be included or considered by the  
586 appraiser, or specific actions the appraiser may take.

587 626.9973 Prohibitions; penalties.—Effective October 1,  
588 2016, a person may not use the name or title "property insurance  
589 appraiser," "appraiser," "property insurance appraisal umpire,"  
590 or "umpire" unless he or she is licensed pursuant to this part.  
591 A person who is found to be in violation of this section commits  
592 a misdemeanor of the first degree, punishable as provided in s.  
593 775.082 or s. 775.083.

594 626.9974 Rulemaking authority.—The department may adopt  
595 rules to administer this part. Such rules may:

596 (1) Establish a process for determining compliance with  
597 licensure requirements.

598 (2) Prescribe necessary forms.

599 (3) Implement specific rulemaking authority pursuant to  
600 this section.

601 (4) Establish specific penalties which may be assessed  
602 against licensees under this part for violations of the Florida  
603 Insurance Code.

604 Section 2. For the 2016-2017 fiscal year, the sums of  
605 \$605,874 in recurring funds and \$59,053 in nonrecurring funds  
606 from the Insurance Regulatory Trust Fund are appropriated to the  
607 Department of Financial Services, and four full-time equivalent  
608 positions with associated salary rate of 212,315 are authorized,  
609 for the purpose of implementing this act.

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610           Section 3. Except as otherwise expressly provided, this act  
611 shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Rob Bradley, Chair  
Committee on Regulated Industries

**Subject:** Committee Agenda Request

**Date:** October 19, 2015

---

I respectfully request that **Senate Bill #336**, relating to Property Insurance Appraisals, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink, appearing to read "Garrett Richter".

---

Senator Garrett Richter  
Florida Senate, District 23

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/2/16

SB 336

Meeting Date

Bill Number (if applicable)

Topic SB 336

Amendment Barcode (if applicable)

Name DAVID BIEMAN

Job Title Attorney

Address 1776 N Pine Island Rd 102

Phone 954-303-8838

Street

City

Plantation

FL

State

33322

Zip

Email dabier@att.net

Speaking:  For  Against  Information

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

Representing Insurance Approval & Umpire 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/2/16

Meeting Date

SB336

Bill Number (if applicable)

416356

Amendment Barcode (if applicable)

Topic SB 336 / Amendment

Name David Bierman

Job Title Attorney

Address 1776 N Pine Island Rd 102

Street

Phone 954-303-8838

Plantation FL 33322

City

State

Zip

Email dabier@att.net

Speaking: [X] For [ ] Against [ ] Information

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

Representing Insurance Appraisers & Umpire Association

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] 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)

2/2/16

Meeting Date

336

Bill Number (if applicable)

Topic Property insurance companies

Amendment Barcode (if applicable)

Name Bill Cotterall

Job Title Attorney

Address 207 W. Park Ave

Phone 850-391-9730

Street

Tallahassee FL 32308

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Cotterall Law Firm

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.**



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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)

336

Meeting Date

Bill Number (if applicable)

Topic

"UMPIRES" LICENSING

Amendment Barcode (if applicable)

Name

Reggie Garcia

Job Title

—

Address

PO BOX 11069

Phone

933-7150

Street

Tallahassee

Fla.

32302

City

State

Zip

Email

reggiegarcia@law.ejicloud.com

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

the Florida Justice 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/2/16

Meeting Date

SB 336

Bill Number (if applicable)

416356

Amendment Barcode (if applicable)

Topic Appraisal and Empire Bill

Name Christopher Ligorini

Job Title Attorney

Address 117 S. Willow Ave

Street

Phone 913-223-2929

City Tpa

State Fla

Zip 33606

Email cligorini@ligorinilaw.com

Speaking: For [ ] Against [X] Information [ ]

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

Representing Home and property owners

Appearing at request of Chair: Yes [ ] No [X]

Lobbyist registered with Legislature: Yes [ ] No [X]

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.



416356

LEGISLATIVE ACTION

Senate

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House

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The Committee on Regulated Industries (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 624.04, Florida Statutes, is amended to  
read:

624.04 "Person" defined.—"Person" includes an individual,  
insurer, company, association, organization, Lloyds, society,  
reciprocal insurer or interinsurance exchange, partnership,  
syndicate, business trust, corporation, agent, general agent,



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11 broker, service representative, adjuster, property insurance  
12 appraisal umpire, and every legal entity.

13 Section 2. Subsection (2) of section 624.303, Florida  
14 Statutes, is amended to read:

15 624.303 Seal; certified copies as evidence.—

16 (2) All certificates executed by the department or office,  
17 other than licenses of agents, property insurance appraisal  
18 umpires, ~~or~~ adjusters, or similar licenses or permits, shall  
19 bear its respective seal.

20 Section 3. Paragraphs (b) and (c) of subsection (4) of  
21 section 624.311, Florida Statutes, are amended to read:

22 624.311 Records; reproductions; destruction.—

23 (4) To facilitate the efficient use of floor space and  
24 filing equipment in its offices, the department, commission, and  
25 office may each destroy the following records and documents  
26 pursuant to chapter 257:

27 (b) Agent, adjuster, property insurance appraisal umpire,  
28 and similar license files, including license files of the  
29 Division of State Fire Marshal, over 2 years old; except that  
30 the department or office shall preserve by reproduction or  
31 otherwise a copy of the original records upon the basis of which  
32 each such licensee qualified for her or his initial license,  
33 except a competency examination, and of any disciplinary  
34 proceeding affecting the licensee;

35 (c) All agent, adjuster, property insurance appraisal  
36 umpire, and similar license files and records, including  
37 original license qualification records and records of  
38 disciplinary proceedings 5 years after a licensee has ceased to  
39 be qualified for a license;



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40 Section 4. Section 624.317, Florida Statutes, is amended to  
41 read:

42 624.317 Investigation of agents, adjusters, property  
43 insurance appraisal umpires, administrators, service companies,  
44 and others.—If it has reason to believe that any person has  
45 violated or is violating any provision of this code, or upon the  
46 written complaint signed by any interested person indicating  
47 that any such violation may exist:

48 (1) The department shall conduct such investigation as it  
49 deems necessary of the accounts, records, documents, and  
50 transactions pertaining to or affecting the insurance affairs of  
51 any general agent, surplus lines agent, adjuster, property  
52 insurance appraisal umpire, managing general agent, insurance  
53 agent, insurance agency, customer representative, service  
54 representative, or other person subject to its jurisdiction,  
55 subject to the requirements of s. 626.601.

56 (2) The office shall conduct such investigation as it deems  
57 necessary of the accounts, records, documents, and transactions  
58 pertaining to or affecting the insurance affairs of any:

59 (a) Administrator, service company, or other person subject  
60 to its jurisdiction.

61 (b) Person having a contract or power of attorney under  
62 which she or he enjoys in fact the exclusive or dominant right  
63 to manage or control an insurer.

64 (c) Person engaged in or proposing to be engaged in the  
65 promotion or formation of:

- 66 1. A domestic insurer;
- 67 2. An insurance holding corporation; or
- 68 3. A corporation to finance a domestic insurer or in the



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69 production of the domestic insurer's business.

70 Section 5. Paragraph (c) of subsection (19) and subsection  
71 (28) of section 624.501, Florida Statutes, are amended, and  
72 subsection (29) is added to that section, to read:

73 624.501 Filing, license, appointment, and miscellaneous  
74 fees.—The department, commission, or office, as appropriate,  
75 shall collect in advance, and persons so served shall pay to it  
76 in advance, fees, licenses, and miscellaneous charges as  
77 follows:

78 (19) Miscellaneous services:

79 (c) For preparing lists of agents, adjusters, property  
80 insurance appraisal umpires, and other insurance  
81 representatives, and for other miscellaneous services, such  
82 reasonable charge as may be fixed by the office or department.

83 (28) Late filing of appointment renewals for agents,  
84 adjusters, property insurance appraisal umpires, and other  
85 insurance representatives, each appointment.....\$20.00

86 (29) Property insurance appraisal umpires:

87 (a) Property insurance appraisal umpire's appointment and  
88 biennial renewal or continuation thereof, each  
89 appointment.....\$60.00

90 (b) Fee to cover the actual cost of a credit report when  
91 such report must be secured by department.

92 Section 6. Paragraph (e) of subsection (1) of section  
93 624.523, Florida Statutes, is amended to read:

94 624.523 Insurance Regulatory Trust Fund.—

95 (1) There is created in the State Treasury a trust fund  
96 designated "Insurance Regulatory Trust Fund" to which shall be  
97 credited all payments received on account of the following



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98 items:

99 (e) All payments received on account of items provided for  
100 under respective provisions of s. 624.501, as follows:

101 1. Subsection (1) (certificate of authority of insurer).

102 2. Subsection (2) (charter documents of insurer).

103 3. Subsection (3) (annual license tax of insurer).

104 4. Subsection (4) (annual statement of insurer).

105 5. Subsection (5) (application fee for insurance  
106 representatives).

107 6. The "appointment fee" portion of any appointment  
108 provided for under paragraphs (6) (a) and (b) (insurance  
109 representatives, property, marine, casualty and surety  
110 insurance, and agents).

111 7. Paragraph (6) (c) (nonresident agents).

112 8. Paragraph (6) (d) (service representatives).

113 9. The "appointment fee" portion of any appointment  
114 provided for under paragraph (7) (a) (life insurance agents,  
115 original appointment, and renewal or continuation of  
116 appointment).

117 10. Paragraph (7) (b) (nonresident agent license).

118 11. The "appointment fee" portion of any appointment  
119 provided for under paragraph (8) (a) (health insurance agents,  
120 agent's appointment, and renewal or continuation fee).

121 12. Paragraph (8) (b) (nonresident agent appointment).

122 13. The "appointment fee" portion of any appointment  
123 provided for under subsections (9) and (10) (limited licenses  
124 and fraternal benefit society agents).

125 14. Subsection (11) (surplus lines agent).

126 15. Subsection (12) (adjusters' appointment).



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- 127           16. Subsection (13) (examination fee).  
128           17. Subsection (14) (temporary license and appointment as  
129 agent or adjuster).  
130           18. Subsection (15) (reissuance, reinstatement, etc.).  
131           19. Subsection (16) (additional license continuation fees).  
132           20. Subsection (17) (filing application for permit to form  
133 insurer).  
134           21. Subsection (18) (license fee of rating organization).  
135           22. Subsection (19) (miscellaneous services).  
136           23. Subsection (20) (insurance agencies).  
137           24. Subsection (29) (property insurance appraisal umpires'  
138 appointment).

139           Section 7. Subsections (16) through (19) of section  
140 626.015, Florida Statutes, are renumbered as subsections (17)  
141 through (20), respectively, and a new subsection (16) is added  
142 to that section, to read:

143           626.015 Definitions.—As used in this part:

144           (16) "Property insurance appraisal umpire" or "umpire"  
145 means a property insurance appraisal umpire as defined in s.  
146 626.9964.

147           Section 8. Subsection (1) of section 626.016, Florida  
148 Statutes, is amended to read:

149           626.016 Powers and duties of department, commission, and  
150 office.—

151           (1) The powers and duties of the Chief Financial Officer  
152 and the department specified in this part apply only with  
153 respect to insurance agents, insurance agencies, managing  
154 general agents, ~~insurance~~ adjusters, umpires, reinsurance  
155 intermediaries, viatical settlement brokers, customer





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156 representatives, service representatives, and agencies.

157 Section 9. Subsection (1) of section 626.022, Florida  
158 Statutes, is amended to read:

159 626.022 Scope of part.—

160 (1) This part applies as to insurance agents, service  
161 representatives, adjusters, umpires, and insurance agencies; as  
162 to any and all kinds of insurance; and as to stock insurers,  
163 mutual insurers, reciprocal insurers, and all other types of  
164 insurers, except that:

165 (a) It does not apply as to reinsurance, except that ss.  
166 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss.  
167 626.291-626.301, s. 626.331, ss. 626.342-626.521, ss. 626.541-  
168 626.591, and ss. 626.601-626.711 shall apply as to reinsurance  
169 intermediaries as defined in s. 626.7492.

170 (b) The applicability of this chapter as to fraternal  
171 benefit societies shall be as provided in chapter 632.

172 (c) It does not apply to a bail bond agent, as defined in  
173 s. 648.25, except as provided in chapter 648 or chapter 903.

174 (d) This part does not apply to a certified public  
175 accountant licensed under chapter 473 who is acting within the  
176 scope of the practice of public accounting, as defined in s.  
177 473.302, provided that the activities of the certified public  
178 accountant are limited to advising a client of the necessity of  
179 obtaining insurance, the amount of insurance needed, or the line  
180 of coverage needed, and provided that the certified public  
181 accountant does not directly or indirectly receive or share in  
182 any commission or referral fee.

183 Section 10. Subsections (6) through (9) of section 626.112,  
184 Florida Statutes, are renumbered as subsections (8) through



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185 (11), respectively, subsection (1) is amended, and new  
186 subsections (6) and (7) are added to that section, to read:

187 626.112 License and appointment required; agents, customer  
188 representatives, adjusters, umpires, insurance agencies, service  
189 representatives, managing general agents.-

190 (1) (a) No person may be, act as, or advertise or hold  
191 himself or herself out to be an insurance agent, insurance  
192 adjuster, or customer representative unless he or she is  
193 currently licensed by the department and appointed by an  
194 appropriate appointing entity or person.

195 (b) Except as provided in subsection (8) ~~(6)~~ or in  
196 applicable department rules, and in addition to other conduct  
197 described in this chapter with respect to particular types of  
198 agents, a license as an insurance agent, service representative,  
199 customer representative, or limited customer representative is  
200 required in order to engage in the solicitation of insurance.  
201 For purposes of this requirement, as applicable to any of the  
202 license types described in this section, the solicitation of  
203 insurance is the attempt to persuade any person to purchase an  
204 insurance product by:

205 1. Describing the benefits or terms of insurance coverage,  
206 including premiums or rates of return;

207 2. Distributing an invitation to contract to prospective  
208 purchasers;

209 3. Making general or specific recommendations as to  
210 insurance products;

211 4. Completing orders or applications for insurance  
212 products;

213 5. Comparing insurance products, advising as to insurance



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214 matters, or interpreting policies or coverages; or  
215         6. Offering or attempting to negotiate on behalf of another  
216 person a viatical settlement contract as defined in s. 626.9911.  
217  
218 However, an employee leasing company licensed pursuant to  
219 chapter 468 which is seeking to enter into a contract with an  
220 employer that identifies products and services offered to  
221 employees may deliver proposals for the purchase of employee  
222 leasing services to prospective clients of the employee leasing  
223 company setting forth the terms and conditions of doing  
224 business; classify employees as permitted by s. 468.529; collect  
225 information from prospective clients and other sources as  
226 necessary to perform due diligence on the prospective client and  
227 to prepare a proposal for services; provide and receive  
228 enrollment forms, plans, and other documents; and discuss or  
229 explain in general terms the conditions, limitations, options,  
230 or exclusions of insurance benefit plans available to the client  
231 or employees of the employee leasing company were the client to  
232 contract with the employee leasing company. Any advertising  
233 materials or other documents describing specific insurance  
234 coverages must identify and be from a licensed insurer or its  
235 licensed agent or a licensed and appointed agent employed by the  
236 employee leasing company. The employee leasing company may not  
237 advise or inform the prospective business client or individual  
238 employees of specific coverage provisions, exclusions, or  
239 limitations of particular plans. As to clients for which the  
240 employee leasing company is providing services pursuant to s.  
241 468.525(4), the employee leasing company may engage in  
242 activities permitted by ss. 626.7315, 626.7845, and 626.8305,



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243 subject to the restrictions specified in those sections. If a  
244 prospective client requests more specific information concerning  
245 the insurance provided by the employee leasing company, the  
246 employee leasing company must refer the prospective business  
247 client to the insurer or its licensed agent or to a licensed and  
248 appointed agent employed by the employee leasing company.

249 (6) No person shall be, act as, or represent or hold  
250 himself or herself out to be a property insurance appraisal  
251 umpire unless he or she holds a currently effective license and  
252 appointment as a property insurance appraisal umpire.

253 (7) No person shall be, act as, or represent or hold  
254 himself or herself out to be a property insurance appraiser who  
255 is eligible to represent an insured on a personal residential or  
256 commercial residential property insurance claim unless he or she  
257 holds a currently effective license as an adjuster or is exempt  
258 from licensure under s. 626.860.

259 Section 11. Subsections (1) and (4) of section 626.171,  
260 Florida Statutes, are amended to read:

261 626.171 Application for license as an agent, customer  
262 representative, adjuster, umpire, service representative,  
263 managing general agent, or reinsurance intermediary.—

264 (1) The department may not issue a license as agent,  
265 customer representative, adjuster, umpire, service  
266 representative, managing general agent, or reinsurance  
267 intermediary to any person except upon written application filed  
268 with the department, meeting the qualifications for the license  
269 applied for as determined by the department, and payment in  
270 advance of all applicable fees. The application must be made  
271 under the oath of the applicant and be signed by the applicant.



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272 An applicant may permit a third party to complete, submit, and  
273 sign an application on the applicant's behalf, but is  
274 responsible for ensuring that the information on the application  
275 is true and correct and is accountable for any misstatements or  
276 misrepresentations. The department shall accept the uniform  
277 application for nonresident agent licensing. The department may  
278 adopt revised versions of the uniform application by rule.

279 (4) An applicant for a license as an agent, customer  
280 representative, adjuster, umpire, service representative,  
281 managing general agent, or reinsurance intermediary must submit  
282 a set of the individual applicant's fingerprints, or, if the  
283 applicant is not an individual, a set of the fingerprints of the  
284 sole proprietor, majority owner, partners, officers, and  
285 directors, to the department and must pay the fingerprint  
286 processing fee set forth in s. 624.501. Fingerprints shall be  
287 used to investigate the applicant's qualifications pursuant to  
288 s. 626.201. The fingerprints shall be taken by a law enforcement  
289 agency, designated examination center, or other department-  
290 approved entity. The department shall require all designated  
291 examination centers to have fingerprinting equipment and to take  
292 fingerprints from any applicant or prospective applicant who  
293 pays the applicable fee. The department may not approve an  
294 application for licensure as an agent, customer service  
295 representative, adjuster, umpire, service representative,  
296 managing general agent, or reinsurance intermediary if  
297 fingerprints have not been submitted.

298 Section 12. Subsection (9) of section 626.207, Florida  
299 Statutes, is amended to read:

300 626.207 Disqualification of applicants and licensees;



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301 penalties against licensees; rulemaking authority.-

302 (9) Section 112.011 does not apply to any applicants for  
303 licensure under the Florida Insurance Code, including, but not  
304 limited to, agents, agencies, adjusters, adjusting firms,  
305 umpires, customer representatives, or managing general agents.

306 Section 13. Subsections (1) and (2) of section 626.2815,  
307 Florida Statutes, are amended to read:

308 626.2815 Continuing education requirements.-

309 (1) The purpose of this section is to establish  
310 requirements and standards for continuing education courses for  
311 individuals licensed to solicit, sell, or adjust insurance or to  
312 serve as an umpire in the state.

313 (2) Except as otherwise provided in this section, this  
314 section applies to individuals licensed to transact ~~engage in~~  
315 ~~the sale of~~ insurance or adjust ~~adjustment of~~ insurance claims  
316 in this state for all lines of insurance for which an  
317 examination is required for licensing and to individuals  
318 licensed to serve as an umpire ~~each insurer, employer, or~~  
319 ~~appointing entity, including, but not limited to, those created~~  
320 ~~or existing pursuant to s. 627.351~~. This section does not apply  
321 to an individual who holds a license for the sale of any line of  
322 insurance for which an examination is not required by the laws  
323 of this state or who holds a limited license as a crop or hail  
324 and multiple-peril crop insurance agent. Licensees who are  
325 unable to comply with the continuing education requirements due  
326 to active duty in the military may submit a written request for  
327 a waiver to the department.

328 Section 14. Subsections (1), (3), (5), and (6) of section  
329 626.451, Florida Statutes, are amended to read:



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330 626.451 Appointment of agent or other representative.—

331 (1) Each appointing entity or person designated by the  
332 department to administer the appointment process appointing an  
333 agent, adjuster, umpire, service representative, customer  
334 representative, or managing general agent in this state shall  
335 file the appointment with the department or office and, at the  
336 same time, pay the applicable appointment fee and taxes. Every  
337 appointment shall be subject to the prior issuance of the  
338 appropriate agent's, adjuster's, umpire's, service  
339 representative's, customer representative's, or managing general  
340 agent's license.

341 (3) By authorizing the effectuation of the appointment of  
342 an agent, adjuster, umpire, service representative, customer  
343 representative, or managing general agent the appointing entity  
344 is thereby certifying to the department that it is willing to be  
345 bound by the acts of the agent, adjuster, umpire, service  
346 representative, customer representative, or managing general  
347 agent, within the scope of the licensee's employment or  
348 appointment.

349 (5) Any law enforcement agency or state attorney's office  
350 that is aware that an agent, adjuster, umpire, service  
351 representative, customer representative, or managing general  
352 agent has pleaded guilty or nolo contendere to or has been found  
353 guilty of a felony shall notify the department or office of such  
354 fact.

355 (6) Upon the filing of an information or indictment against  
356 an agent, adjuster, umpire, service representative, customer  
357 representative, or managing general agent, the state attorney  
358 shall immediately furnish the department or office a certified



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359 copy of the information or indictment.

360 Section 15. Section 626.461, Florida Statutes, is amended  
361 to read:

362 626.461 Continuation of appointment of agent or other  
363 representative.—Subject to renewal or continuation by the  
364 appointing entity, the appointment of the agent, adjuster,  
365 umpire, service representative, customer representative, or  
366 managing general agent shall continue in effect until the  
367 person's license is revoked or otherwise terminated, unless  
368 written notice of earlier termination of the appointment is  
369 filed with the department or person designated by the department  
370 to administer the appointment process by either the appointing  
371 entity or the appointee.

372 Section 16. Subsection (3) of section 626.521, Florida  
373 Statutes, is amended to read:

374 626.521 Character, credit reports.—

375 (3) As to an applicant for an adjuster's, umpire's, or  
376 reinsurance intermediary's license who is to be self-employed,  
377 the department may secure, at the cost of the applicant, a full  
378 detailed credit and character report made by an established and  
379 reputable independent reporting service relative to the  
380 applicant.

381 Section 17. Subsection (1) of section 626.541, Florida  
382 Statutes, is amended to read:

383 626.541 Firm, corporate, and business names; officers;  
384 associates; notice of changes.—

385 (1) Any licensed agent, ~~or~~ adjuster, or umpire doing  
386 business under a firm or corporate name or under any business  
387 name other than his or her own individual name shall, within 30





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388 days after initially transacting the initial transaction of  
389 insurance or engaging in insurance activities under such  
390 business name, file with the department, on forms adopted and  
391 furnished by the department, a written statement of the firm,  
392 corporate, or business name being so used, the address of any  
393 office or offices or places of business making use of such name,  
394 and the name and social security number of each officer and  
395 director of the corporation and of each individual associated in  
396 such firm or corporation as to the insurance transactions  
397 thereof or in the use of such business name.

398 Section 18. Subsection (1) of section 626.601, Florida  
399 Statutes, is amended to read:

400 626.601 Improper conduct; inquiry; fingerprinting.—

401 (1) The department or office may, upon its own motion or  
402 upon a written complaint signed by any interested person and  
403 filed with the department or office, inquire into any alleged  
404 improper conduct of any licensed, approved, or certified  
405 licensee, insurance agency, agent, adjuster, umpire, service  
406 representative, managing general agent, customer representative,  
407 title insurance agent, title insurance agency, mediator, neutral  
408 evaluator, navigator, continuing education course provider,  
409 instructor, school official, or monitor group under this code.  
410 The department or office may thereafter initiate an  
411 investigation of any such individual or entity if it has  
412 reasonable cause to believe that the individual or entity has  
413 violated any provision of the insurance code. During the course  
414 of its investigation, the department or office shall contact the  
415 individual or entity being investigated unless it determines  
416 that contacting such individual or entity could jeopardize the



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417 successful completion of the investigation or cause injury to  
418 the public.

419 Section 19. Subsection (1) of section 626.611, Florida  
420 Statutes, is amended to read:

421 626.611 Grounds for compulsory refusal, suspension, or  
422 revocation of agent's, title agency's, adjuster's, umpire's,  
423 customer representative's, service representative's, or managing  
424 general agent's license or appointment.—

425 (1) The department shall deny an application for, suspend,  
426 revoke, or refuse to renew or continue the license or  
427 appointment of any applicant, agent, title agency, adjuster,  
428 umpire, customer representative, service representative, or  
429 managing general agent, and it shall suspend or revoke the  
430 eligibility to hold a license or appointment of any such person,  
431 if it finds that as to the applicant, licensee, or appointee any  
432 one or more of the following applicable grounds exist:

433 (a) Lack of one or more of the qualifications for the  
434 license or appointment as specified in this code.

435 (b) Material misstatement, misrepresentation, or fraud in  
436 obtaining the license or appointment or in attempting to obtain  
437 the license or appointment.

438 (c) Failure to pass to the satisfaction of the department  
439 any examination required under this code.

440 (d) If the license or appointment is willfully used, or to  
441 be used, to circumvent any of the requirements or prohibitions  
442 of this code.

443 (e) Willful misrepresentation of any insurance policy or  
444 annuity contract or willful deception with regard to any such  
445 policy or contract, done either in person or by any form of



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446 dissemination of information or advertising.

447 (f) If, as an adjuster, or agent licensed and appointed to  
448 adjust claims under this code, he or she has materially  
449 misrepresented to an insured or other interested party the terms  
450 and coverage of an insurance contract with intent and for the  
451 purpose of effecting settlement of claim for loss or damage or  
452 benefit under such contract on less favorable terms than those  
453 provided in and contemplated by the contract.

454 (g) Demonstrated lack of fitness or trustworthiness to  
455 engage in the business of insurance.

456 (h) Demonstrated lack of reasonably adequate knowledge and  
457 technical competence to engage in the transactions authorized by  
458 the license or appointment.

459 (i) Fraudulent or dishonest practices in the conduct of  
460 business under the license or appointment.

461 (j) Misappropriation, conversion, or unlawful withholding  
462 of moneys belonging to insurers or insureds or beneficiaries or  
463 to others and received in conduct of business under the license  
464 or appointment.

465 (k) Unlawfully rebating, attempting to unlawfully rebate,  
466 or unlawfully dividing or offering to divide his or her  
467 commission with another.

468 (l) Having obtained or attempted to obtain, or having used  
469 or using, a license or appointment as agent or customer  
470 representative for the purpose of soliciting or handling  
471 "controlled business" as defined in s. 626.730 with respect to  
472 general lines agents, s. 626.784 with respect to life agents,  
473 and s. 626.830 with respect to health agents.

474 (m) Willful failure to comply with, or willful violation



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475 of, any proper order or rule of the department or willful  
476 violation of any provision of this code.

477 (n) Having been found guilty of or having pleaded guilty or  
478 nolo contendere to a felony or a crime punishable by  
479 imprisonment of 1 year or more under the law of the United  
480 States of America or of any state thereof or under the law of  
481 any other country which involves moral turpitude, without regard  
482 to whether a judgment of conviction has been entered by the  
483 court having jurisdiction of such cases.

484 (o) Fraudulent or dishonest practice in submitting or  
485 aiding or abetting any person in the submission of an  
486 application for workers' compensation coverage under chapter 440  
487 containing false or misleading information as to employee  
488 payroll or classification for the purpose of avoiding or  
489 reducing the amount of premium due for such coverage.

490 (p) Sale of an unregistered security that was required to  
491 be registered, pursuant to chapter 517.

492 (q) In transactions related to viatical settlement  
493 contracts as defined in s. 626.9911:

494 1. Commission of a fraudulent or dishonest act.

495 2. No longer meeting the requirements for initial  
496 licensure.

497 3. Having received a fee, commission, or other valuable  
498 consideration for his or her services with respect to viatical  
499 settlements that involved unlicensed viatical settlement  
500 providers or persons who offered or attempted to negotiate on  
501 behalf of another person a viatical settlement contract as  
502 defined in s. 626.9911 and who were not licensed life agents.

503 4. Dealing in bad faith with viators.



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504 Section 20. Section 626.621, Florida Statutes, is amended  
505 to read:

506 626.621 Grounds for discretionary refusal, suspension, or  
507 revocation of agent's, adjuster's, umpire's, customer  
508 representative's, service representative's, or managing general  
509 agent's license or appointment.—The department may, in its  
510 discretion, deny an application for, suspend, revoke, or refuse  
511 to renew or continue the license or appointment of any  
512 applicant, agent, adjuster, umpire, customer representative,  
513 service representative, or managing general agent, and it may  
514 suspend or revoke the eligibility to hold a license or  
515 appointment of any such person, if it finds that as to the  
516 applicant, licensee, or appointee any one or more of the  
517 following applicable grounds exist under circumstances for which  
518 such denial, suspension, revocation, or refusal is not mandatory  
519 under s. 626.611:

520 (1) Any cause for which issuance of the license or  
521 appointment could have been refused had it then existed and been  
522 known to the department.

523 (2) Violation of any provision of this code or of any other  
524 law applicable to the business of insurance in the course of  
525 dealing under the license or appointment.

526 (3) Violation of any lawful order or rule of the  
527 department, commission, or office.

528 (4) Failure or refusal, upon demand, to pay over to any  
529 insurer he or she represents or has represented any money coming  
530 into his or her hands belonging to the insurer.

531 (5) Violation of the provision against twisting, as defined  
532 in s. 626.9541(1)(1).



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533           (6) In the conduct of business under the license or  
534 appointment, engaging in unfair methods of competition or in  
535 unfair or deceptive acts or practices, as prohibited under part  
536 IX of this chapter, or having otherwise shown himself or herself  
537 to be a source of injury or loss to the public.

538           (7) Willful overinsurance of any property or health  
539 insurance risk.

540           (8) Having been found guilty of or having pleaded guilty or  
541 nolo contendere to a felony or a crime punishable by  
542 imprisonment of 1 year or more under the law of the United  
543 States of America or of any state thereof or under the law of  
544 any other country, without regard to whether a judgment of  
545 conviction has been entered by the court having jurisdiction of  
546 such cases.

547           (9) If a life agent, violation of the code of ethics.

548           (10) Cheating on an examination required for licensure or  
549 violating test center or examination procedures published  
550 orally, in writing, or electronically at the test site by  
551 authorized representatives of the examination program  
552 administrator. Communication of test center and examination  
553 procedures must be clearly established and documented.

554           (11) Failure to inform the department in writing within 30  
555 days after pleading guilty or nolo contendere to, or being  
556 convicted or found guilty of, any felony or a crime punishable  
557 by imprisonment of 1 year or more under the law of the United  
558 States or of any state thereof, or under the law of any other  
559 country without regard to whether a judgment of conviction has  
560 been entered by the court having jurisdiction of the case.

561           (12) Knowingly aiding, assisting, procuring, advising, or



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562 abetting any person in the violation of or to violate a  
563 provision of the insurance code or any order or rule of the  
564 department, commission, or office.

565 (13) Has been the subject of or has had a license, permit,  
566 appointment, registration, or other authority to conduct  
567 business subject to any decision, finding, injunction,  
568 suspension, prohibition, revocation, denial, judgment, final  
569 agency action, or administrative order by any court of competent  
570 jurisdiction, administrative law proceeding, state agency,  
571 federal agency, national securities, commodities, or option  
572 exchange, or national securities, commodities, or option  
573 association involving a violation of any federal or state  
574 securities or commodities law or any rule or regulation adopted  
575 thereunder, or a violation of any rule or regulation of any  
576 national securities, commodities, or options exchange or  
577 national securities, commodities, or options association.

578 (14) Failure to comply with any civil, criminal, or  
579 administrative action taken by the child support enforcement  
580 program under Title IV-D of the Social Security Act, 42 U.S.C.  
581 ss. 651 et seq., to determine paternity or to establish, modify,  
582 enforce, or collect support.

583 (15) Directly or indirectly accepting any compensation,  
584 inducement, or reward from an inspector for the referral of the  
585 owner of the inspected property to the inspector or inspection  
586 company. This prohibition applies to an inspection intended for  
587 submission to an insurer in order to obtain property insurance  
588 coverage or establish the applicable property insurance premium.

589 Section 21. Subsection (4) of section 626.641, Florida  
590 Statutes, is amended to read:



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591 626.641 Duration of suspension or revocation.—

592 (4) During the period of suspension or revocation of a  
593 license or appointment, and until the license is reinstated or,  
594 if revoked, a new license issued, the former licensee or  
595 appointee may not engage in or attempt or profess to engage in  
596 any transaction or business for which a license or appointment  
597 is required under this code or directly or indirectly own,  
598 control, or be employed in any manner by an agent, agency,  
599 adjuster, ~~or~~ adjusting firm, or umpire.

600 Section 22. Subsection (2) of section 626.7845, Florida  
601 Statutes, is amended to read:

602 626.7845 Prohibition against unlicensed transaction of life  
603 insurance.—

604 (2) Except as provided in s. 626.112(8) ~~626.112(6)~~, with  
605 respect to any line of authority specified in s. 626.015(10), no  
606 individual shall, unless licensed as a life agent:

607 (a) Solicit insurance or annuities or procure applications;

608 (b) In this state, engage or hold himself or herself out as  
609 engaging in the business of analyzing or abstracting insurance  
610 policies or of counseling or advising or giving opinions to  
611 persons relative to insurance or insurance contracts other than:

612 1. As a consulting actuary advising an insurer; or

613 2. As to the counseling and advising of labor unions,  
614 associations, trustees, employers, or other business entities,  
615 the subsidiaries and affiliates of each, relative to their  
616 interests and those of their members or employees under  
617 insurance benefit plans; or

618 (c) In this state, from this state, or with a resident of  
619 this state, offer or attempt to negotiate on behalf of another





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620 person a viatical settlement contract as defined in s. 626.9911.

621 Section 23. Section 626.8305, Florida Statutes, is amended  
622 to read:

623 626.8305 Prohibition against the unlicensed transaction of  
624 health insurance.—Except as provided in s. 626.112(8)  
625 ~~626.112(6)~~, with respect to any line of authority specified in  
626 s. 626.015(6), no individual shall, unless licensed as a health  
627 agent:

628 (1) Solicit insurance or procure applications; or

629 (2) In this state, engage or hold himself or herself out as  
630 engaging in the business of analyzing or abstracting insurance  
631 policies or of counseling or advising or giving opinions to  
632 persons relative to insurance contracts other than:

633 (a) As a consulting actuary advising insurers; or

634 (b) As to the counseling and advising of labor unions,  
635 associations, trustees, employers, or other business entities,  
636 the subsidiaries and affiliates of each, relative to their  
637 interests and those of their members or employees under  
638 insurance benefit plans.

639 Section 24. Paragraph (a) of subsection (2) of section  
640 626.8411, Florida Statutes, is amended to read:

641 626.8411 Application of Florida Insurance Code provisions  
642 to title insurance agents or agencies.—

643 (2) The following provisions of part I do not apply to  
644 title insurance agents or title insurance agencies:

645 (a) Section 626.112(9) ~~626.112(7)~~, relating to licensing of  
646 insurance agencies.

647 Section 25. Subsection (4) of section 626.8443, Florida  
648 Statutes, is amended to read:



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649 626.8443 Duration of suspension or revocation.—

650 (4) During the period of suspension or after revocation of  
651 the license and appointment, the former licensee shall not  
652 engage in or attempt to profess to engage in any transaction or  
653 business for which a license or appointment is required under  
654 this code or directly or indirectly own, control, or be employed  
655 in any manner by any insurance agent or agency, ~~or~~ adjuster, ~~or~~  
656 adjusting firm, or umpire.

657 Section 26. Paragraph (d) is added to subsection (11) of  
658 section 626.854, Florida Statutes, to read:

659 626.854 "Public adjuster" defined; prohibitions.—The  
660 Legislature finds that it is necessary for the protection of the  
661 public to regulate public insurance adjusters and to prevent the  
662 unauthorized practice of law.

663 (11)

664 (d) If a public adjuster enters into a contract with an  
665 insured or a claimant to perform an appraisal, as defined in s.  
666 626.9964, the public adjuster may not charge, agree to, or  
667 accept from any source compensation, payment, commission, fee,  
668 or any other thing of value in excess of the limitations set  
669 forth in paragraph (b) for the appraisal services or, if also  
670 serving as adjuster on the claim, a combination of adjuster and  
671 appraisal services.

672 Section 27. Section 626.8791, Florida Statutes, is created  
673 to read:

674 626.8791 Contracts for appraisal services; required  
675 notice.—A contract between an adjuster and an insured or  
676 claimant to perform an appraisal must contain the following  
677 language in at least 14-point boldfaced, uppercase type: "THERE



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678 IS NO LEGAL REQUIREMENT THAT AN APPRAISER CHARGE A CLIENT A SET  
679 FEE OR A PERCENTAGE OF MONEY RECOVERED IN A CASE. YOU, THE  
680 CLIENT, HAVE THE RIGHT TO TALK WITH YOUR APPRAISER ABOUT THE  
681 PROPOSED FEE AND TO BARGAIN ABOUT THE RATE OR PERCENTAGE AS IN  
682 ANY OTHER CONTRACT. IF YOU DO NOT REACH AN AGREEMENT WITH ONE  
683 APPRAISER YOU MAY TALK WITH OTHER APPRAISERS."

684 Section 28. Subsection (1) of section 626.9957, Florida  
685 Statutes, is amended to read:

686 626.9957 Conduct prohibited; denial, revocation, or  
687 suspension of registration.—

688 (1) As provided in s. 626.112, only a person licensed as an  
689 insurance agent or customer representative may engage in the  
690 solicitation of insurance. A person who engages in the  
691 solicitation of insurance as described in s. 626.112(1) without  
692 such license is subject to the penalties provided under s.  
693 626.112(11) ~~626.112(9)~~.

694 Section 29. Part XIV of chapter 626, Florida Statutes,  
695 consisting of sections 626.9961 through 626.9968, is created to  
696 read:

697 PART XIV

698 PROPERTY INSURANCE APPRAISAL UMPIRES

699 626.9961 Short title.—This part may be referred to as the  
700 "Property Insurance Appraisal Umpire Law."

701 626.9962 Legislative purpose.—The Legislature finds it  
702 necessary to regulate persons that hold themselves out to the  
703 public as qualified to provide services as property insurance  
704 appraisal umpires in order to protect the public safety and  
705 welfare and to avoid economic injury to the residents of this  
706 state. This part applies only to property insurance appraisal



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707 umpires as defined in this part.

708 626.9963 Part supplements licensing law.—This part is  
709 supplementary to part I, the “Licensing Procedures Law.”

710 626.9964 Definitions.—As used in this part, the term:

711 (1) “Appraisal” means, for purposes of licensure under this  
712 part only, a process of alternative dispute resolution used in a  
713 personal residential or commercial residential property  
714 insurance claim.

715 (2) “Competent” means sufficiently qualified and capable of  
716 performing an appraisal.

717 (3) “Department” means the Department of Financial  
718 Services.

719 (4) “Property insurance appraisal umpire” or “umpire” means  
720 a person selected by the appraisers representing the insurer and  
721 the insured, or, if the appraisers cannot agree, by the court,  
722 who is charged with resolving issues that the appraisers are  
723 unable to agree upon during the course of an appraisal.

724 (5) “Property insurance appraiser” or “appraiser” means the  
725 person selected by an insurer or insured to perform an  
726 appraisal.

727 626.9965 Qualification for license as a property insurance  
728 appraisal umpire.—

729 (1) The department shall issue a license as an umpire to a  
730 person who meets the requirements of subsection (2) and is one  
731 of the following:

732 (a) A retired county, circuit, or appellate judge.

733 (b) Licensed as an engineer pursuant to chapter 471 or is a  
734 retired professional engineer as defined in s. 471.005.

735 (c) Licensed as a general contractor, building contractor,



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736 or residential contractor pursuant to part I of chapter 489.  
737 (d) Licensed or registered as an architect to engage in the  
738 practice of architecture pursuant to part I of chapter 481.  
739 (e) A member of The Florida Bar.  
740 (f) Licensed as an adjuster pursuant to part VI of chapter  
741 626, which license includes the property and casualty lines of  
742 insurance. An adjuster must have been licensed for at least 5  
743 years as an adjuster before he or she may be licensed as an  
744 umpire.  
745 (2) An applicant may be licensed to practice in this state  
746 as an umpire if the applicant:  
747 (a) Is a natural person at least 18 years of age;  
748 (b) Is a United States citizen or legal alien who possesses  
749 work authorization from the United States Bureau of Citizenship  
750 and Immigration;  
751 (c) Is of good moral character;  
752 (d) Has paid the applicable fees specified in s. 624.501;  
753 and  
754 (e) Has, before the date of the application for licensure,  
755 satisfactorily completed education courses approved by the  
756 department covering:  
757 1. Insurance claims estimating; and  
758 2. Insurance law, ethics for insurance professionals,  
759 disciplinary trends, and case studies.  
760 (3) The department may not reject an application solely  
761 because the applicant is or is not a member of a given appraisal  
762 organization.  
763 626.9966 Grounds for refusal, suspension, or revocation of  
764 an umpire license or appointment.—The department may deny an



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765 application for license or appointment under this part; suspend,  
766 revoke, or refuse to renew or continue a license or appointment  
767 of an umpire; or suspend or revoke eligibility for licensure or  
768 appointment as an umpire if the department finds that one or  
769 more of the following applicable grounds exist:

770 (1) Violating a duty imposed upon him or her by law or by  
771 the terms of the umpire agreement; aiding, assisting, or  
772 conspiring with any other person engaged in any such misconduct  
773 and in furtherance thereof; or forming the intent, design, or  
774 scheme to engage in such misconduct and committing an overt act  
775 in furtherance of such intent, design, or scheme. An umpire  
776 commits a violation of this part regardless of whether the  
777 victim or intended victim of the misconduct has sustained any  
778 damage or loss; the damage or loss has been settled and paid  
779 after the discovery of misconduct; or the victim or intended  
780 victim is an insurer or customer or a person in a confidential  
781 relationship with the umpire or is an identified member of the  
782 general public.

783 (2) Having a registration, license, or certification to  
784 practice or conduct any regulated profession, business, or  
785 vocation revoked, suspended, or encumbered; or having an  
786 application for such registration, licensure, or certification  
787 to practice or conduct any regulated profession, business, or  
788 vocation denied, by this or any other state, any nation, or any  
789 possession or district of the United States.

790 (3) Making or filing a report or record, written or oral,  
791 which the umpire knows to be false; willfully failing to file a  
792 report or record required by state or federal law; willfully  
793 impeding or obstructing such filing; or inducing another person



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794 to impede or obstruct such filing.

795 (4) Agreeing to serve as an umpire if service is contingent  
796 upon the umpire reporting a predetermined amount, analysis, or  
797 opinion.

798 (5) Agreeing to serve as an umpire, if the fee to be paid  
799 for his or her services is contingent upon the opinion,  
800 conclusion, or valuation he or she reaches.

801 (6) Failure of an umpire, without good cause, to  
802 communicate within 10 business days of a request for  
803 communication from an appraiser.

804 (7) Violation of any ethical standard for umpires specified  
805 in s. 626.9967.

806 626.9967 Ethical standards for property insurance appraisal  
807 umpires.—

808 (1) CONFIDENTIALITY.—

809 (a) Unless disclosure is otherwise required by law, an  
810 umpire shall maintain confidentiality of all information  
811 revealed during an appraisal.

812 (b) An umpire shall maintain confidentiality in the storage  
813 and disposal of records and may not disclose any identifying  
814 information if materials are used in research, training, or  
815 statistical compilations.

816 (2) FEES AND EXPENSES.—

817 (a) The fees charged by an umpire must be reasonable and  
818 consistent with the nature of the case.

819 (b) In determining fees, an umpire:

820 1. Must charge on an hourly basis and may bill only for  
821 actual time spent on or allocated for the appraisal.

822 2. May not charge, agree to, or accept as compensation or



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823 reimbursement any payment, commission, or fee that is based on a  
824 percentage of the value of the claim or that is contingent upon  
825 a specified outcome.

826 3. May charge for costs actually incurred, and no other  
827 costs.

828 (c) An appraiser may assign the duty of paying the umpire's  
829 fee to, and the umpire is entitled to receive payment directly  
830 from, the insurer and the insured if the insurer and the insured  
831 acknowledge and accept the duty and agree in writing to be  
832 responsible for payment.

833 (3) MAINTENANCE OF RECORDS.—An umpire shall maintain  
834 records necessary to support charges for services and expenses,  
835 and, upon request, shall provide an accounting of all applicable  
836 charges to the insurer and insured. An umpire shall retain  
837 original or true copies of any contracts engaging his or her  
838 services, appraisal reports, and supporting data assembled and  
839 formulated by the umpire in preparing appraisal reports for at  
840 least 5 years. The umpire shall make the records available to  
841 the department for inspection and copying within 7 business days  
842 of a request. If an appraisal has been the subject of, or has  
843 been admitted as evidence in, a lawsuit, reports and records  
844 related to the appraisal must be retained for at least 2 years  
845 after the date that the trial ends.

846 (4) ADVERTISING.—An umpire may not engage in marketing  
847 practices that contain false or misleading information. An  
848 umpire shall ensure that any advertisement of his or her  
849 qualifications, services to be rendered, or the appraisal  
850 process are accurate and honest. An umpire may not make claims  
851 of achieving specific outcomes or promises implying favoritism





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852 for the purpose of obtaining business.

853 (5) INTEGRITY AND IMPARTIALITY.—

854 (a)1. An umpire may not accept an appraisal unless he or  
855 she can serve competently, promptly commence the appraisal and,  
856 thereafter, devote the time and attention to its completion in  
857 the manner expected by all persons involved in the appraisal.

858 2. An umpire shall conduct the appraisal process in a  
859 manner that advances the fair and efficient resolution of issues  
860 that arise.

861 3. An umpire shall deliberate and decide all issues within  
862 the scope of the appraisal, but may not render a decision on any  
863 other issues. An umpire shall decide all matters justly,  
864 exercising independent judgment. An umpire may not delegate his  
865 or her duties to any other person. An umpire who considers the  
866 opinion of an independent expert does not violate this  
867 paragraph.

868 (b) An umpire may not engage in any business, provide any  
869 service, or perform any act that would compromise his or her  
870 integrity or impartiality.

871 (6) SKILL AND EXPERIENCE.—An umpire shall decline or  
872 withdraw from an appraisal or request appropriate assistance  
873 when the facts and circumstances of the appraisal prove to be  
874 beyond his or her skill or experience.

875 (7) GIFTS AND SOLICITATION.—An umpire or any individual or  
876 entity acting on behalf of an umpire may not solicit, accept,  
877 give, or offer to give, directly or indirectly, any gift, favor,  
878 loan, or other item of value in excess of \$25 to any individual  
879 who participates in the appraisal, for the purpose of  
880 solicitation or otherwise attempting to procure future work from



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881 any person who participates in the appraisal, or as an  
882 inducement to entering into an appraisal with an umpire. This  
883 subsection does not prevent an umpire from accepting other  
884 appraisals where the appraisers agree upon the umpire or the  
885 court appoints the umpire.

886 626.9968 Conflicts of interest.—An insurer may challenge an  
887 umpire's impartiality and disqualify the proposed umpire only  
888 if:

889 (1) A familial relationship within the third degree exists  
890 between the umpire and a party or a representative of a party;

891 (2) The umpire has previously represented a party in a  
892 professional capacity in the same claim or matter involving the  
893 same property;

894 (3) The umpire has represented another person in a  
895 professional capacity in the same or a substantially related  
896 matter that includes the claim, the same property or an adjacent  
897 property, and the other person's interests are materially  
898 adverse to the interests of a party; or

899 (4) The umpire has worked as an employer or employee of a  
900 party within the preceding 5 years.

901 Section 30. Section 627.70151, Florida Statutes, is  
902 repealed.

903 Section 31. For the 2016-2017 fiscal year, the sums of  
904 \$24,000 in recurring funds from the Insurance Regulatory Trust  
905 Fund and \$73,107 in recurring funds and \$39,230 in nonrecurring  
906 funds from the Administrative Trust Fund are appropriated to the  
907 Department of Financial Services, and one full-time equivalent  
908 position with associated salary rate of 47,291 is authorized,  
909 for the purpose of implementing this act.



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910           Section 32. This act applies to all appraisals requested on  
911 or after October 1, 2016.

912           Section 33. This act shall take effect October 1, 2016.

913

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

915 And the title is amended as follows:

916           Delete everything before the enacting clause  
917 and insert:

918                                   A bill to be entitled  
919           An act relating to property insurance appraisers and  
920           property insurance appraisal umpires; amending s.  
921           624.04, F.S.; revising the definition of the term  
922           "person"; amending s. 624.303, F.S.; exempting  
923           certificates issued to property insurance appraisal  
924           umpires from the requirement to bear a seal of the  
925           Department of Financial Services; amending s. 624.311,  
926           F.S.; providing a schedule for destruction of property  
927           insurance appraisal umpire licensing files and  
928           records; amending s. 624.317, F.S.; authorizing the  
929           department to investigate property insurance appraisal  
930           umpires for violations of the insurance code; amending  
931           s. 624.501, F.S.; authorizing specified licensing fees  
932           for property insurance appraisal umpires; amending s.  
933           624.523, F.S.; requiring fees associated with property  
934           insurance appraisal umpires' appointments to be  
935           deposited into the Insurance Regulatory Trust Fund;  
936           amending s. 626.015, F.S.; providing a definition;  
937           amending s. 626.016, F.S.; revising the scope of the  
938           Chief Financial Officer's powers and duties and the



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939 department's enforcement jurisdiction to include  
940 umpires; amending s. 626.022, F.S.; including property  
941 insurance appraisal umpire licensing in the scope of  
942 part I of chapter 626, F.S., relating to licensing  
943 procedures; amending s. 626.112, F.S.; requiring  
944 umpires to be licensed and appointed; requiring  
945 licensure as an adjuster when serving as an appraiser  
946 under certain conditions; amending s. 626.171, F.S.;  
947 requiring applicants for licensure as an umpire to  
948 submit fingerprints to the department; amending s.  
949 626.207, F.S.; excluding applicants for licensure as  
950 umpires from application of s. 112.011, F.S., relating  
951 to disqualification from license or public employment;  
952 amending s. 626.2815, F.S.; requiring specified  
953 continuing education for licensure as an umpire;  
954 amending s. 626.451, F.S.; providing requirements  
955 relating to the appointment of an umpire; amending s.  
956 626.461, F.S.; providing that an umpire appointment  
957 continues in effect, subject to renewal or earlier  
958 written notice of termination, until the person's  
959 license is revoked or otherwise terminated; amending  
960 s. 626.521, F.S.; authorizing the department to obtain  
961 a credit and character report for certain umpire  
962 applicants; amending s. 626.541, F.S.; requiring an  
963 umpire to provide certain information to the  
964 department when doing business under a different  
965 business name or when information in the licensure  
966 application changes; amending s. 626.601, F.S.;  
967 authorizing the department to investigate improper



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968       conduct of any licensed umpire; amending s. 626.611,  
969       F.S.; requiring the department to refuse, suspend, or  
970       revoke an umpire's license under certain  
971       circumstances; amending s. 626.621, F.S.; authorizing  
972       the department to refuse, suspend, or revoke an  
973       umpire's license under certain circumstances; amending  
974       s. 626.641, F.S.; prohibiting an umpire from owning,  
975       controlling, or being employed by other licensees  
976       during the period the umpire's license is suspended or  
977       revoked; amending ss. 626.7845, 626.8305, and  
978       626.8411, F.S.; conforming provisions to changes made  
979       by the act; amending s. 626.8443, F.S.; prohibiting a  
980       title insurance agent from owning, controlling, or  
981       being employed by an umpire during the period the  
982       agent's license is suspended or revoked; amending s.  
983       626.854, F.S.; providing limitations on fees charged  
984       by a public adjuster during an appraisal; creating s.  
985       626.8791, F.S.; establishing required notice in a  
986       contract for appraisal services; amending s. 626.9957,  
987       F.S.; conforming a cross-reference; creating part XIV  
988       of chapter 626, F.S., relating to property insurance  
989       appraisal umpires; creating s. 626.9961, F.S.;  
990       providing a short title; creating s. 626.9962, F.S.;  
991       providing legislative purpose; creating s. 626.9963,  
992       F.S.; providing that the part supplements part I of  
993       chapter 626, F.S., the "Licensing Procedure Law";  
994       creating s. 626.9964, F.S.; providing definitions;  
995       creating s. 626.9965, F.S.; providing qualifications  
996       for license as an umpire; creating s. 626.9966, F.S.;



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997 authorizing the department to refuse, suspend, or  
998 revoke an umpire's license under certain  
999 circumstances; creating s. 626.9967, F.S.; providing  
1000 ethical standards for property insurance appraisal  
1001 umpires; creating s. 626.9968, F.S.; providing for  
1002 disqualification of an umpire under certain  
1003 circumstances; repealing s. 627.70151, F.S., relating  
1004 to appraisal conflicts of interest; providing an  
1005 appropriation and authorizing positions; providing  
1006 applicability; providing an effective date.  
1007

**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 1050

INTRODUCER: Committee on Regulated Industries and Senator Brandes

SUBJECT: Regulated Professions and Occupations

DATE: February 3, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Caldwell	RI	<b>Fav/CS</b>
2.			AGG	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1050 eliminates current business license requirements for certain regulated professions, but licensure requirements for individuals engaged in those professions remain intact. The affected professions are architects, interior designers, asbestos consultants and contractors, and landscape architects.

The bill allows certain activities to be practiced without licensure, including nail polishing, low voltage landscape lighting, and low voltage communication cabling. The bill eliminates licensure and registration requirements for athlete agents, talent agencies, hair wrappers, body wrappers, and labor organizations. Licensure of branch offices for yacht and ship brokers is also eliminated.

**II. Present Situation:**

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (department). There are 12 divisions, which include:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;

- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

There are 15 boards and programs established within the Division of Professions,<sup>1</sup> two boards within the Division of Real Estate,<sup>2</sup> and one board within the Division of Certified Public Accounting.<sup>3</sup> The Florida State Boxing Commission (boxing commission) is also assigned to the department for administrative and fiscal accountability purposes only.<sup>4</sup> The department also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”<sup>5</sup>

Regulation of professions is limited under Florida law, to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”<sup>6</sup> Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.<sup>7</sup>

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.<sup>8</sup>

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<sup>1</sup> Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers’ Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors’ Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468.

<sup>2</sup> See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

<sup>3</sup> See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

<sup>4</sup> See s. 548.003(1), F.S.

<sup>5</sup> See s. 455.01(6), F.S.

<sup>6</sup> See s. 455.201(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> See s. 455.201(4)(b), F.S.



Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative framework for all of the professional boards housed under the department as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.<sup>9</sup> When a person is authorized to engage in a profession or occupation in Florida by the department, the department issues a “permit, registration, certificate, or license” to the licensee.<sup>10</sup>

In Fiscal Year 2014-2015, the Division of Accountancy had 38,678 licensees, the Division of Real Estate had 330,565 licensees, and the Board of Professional Engineers had 57,756 licensees.<sup>11</sup> In Fiscal Year 2014-2016, there were 415,207 licensees in the Division of Professions,<sup>12</sup> including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.<sup>13</sup>

Sections 455.203 and 455.213, F.S., establish general licensing provisions for the department, including the authority to charge license fees and license renewal fees. Each board within the department must determine by rule the amount of license fees for its profession, based on estimates of the required revenue to implement regulatory laws.<sup>14</sup>

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<sup>9</sup> See s. 455.203, F.S. The department must also provide legal counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing department staff counsel. See s. 455.221(1), F.S.

<sup>10</sup> See s. 455.01(4) and (5), F.S.

<sup>11</sup> See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2014-2015*, <http://www.myfloridalicense.com/dbpr/os/documents/FY2014-2015AnnualReportFinal.pdf> (last accessed Jan. 31, 2016) at 22.

<sup>12</sup> Of the total 413,401 licensees in the Division of Professions, 22,566 are inactive. *Id.* at 22.

<sup>13</sup> *Id.* at 13.

<sup>14</sup> See s. 455.219(1), F.S.

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 326.004, F.S., to remove the requirement that separate branch office licenses be maintained by yacht and ship brokers, in addition to licensure of the principal office. Brokers and salespeople are required to maintain individual licensure, with a principal place of business in Florida tied to the broker's individual license. No disciplinary orders against branch office licenses were issued in the previous three fiscal years.<sup>15</sup>

**Sections 2** through **9** of the bill amend the provisions in Part I of ch. 447, F.S., to eliminate the registration and regulation of labor organizations by the department. Provisions relating to the right to work and strike, recordkeeping, rights of franchise for labor organizations, civil causes of action, criminal penalties, and recognition of federal regulations remain effective.

According to the department, the National Labor Relations Board (NLRB) is active in Florida and provides similar oversight of unions to that of the department. The United States Department of Labor, Office of Labor Management Standards also registers unions. The department issued no disciplinary orders against labor organizations during the three previous fiscal years.<sup>16</sup>

**Section 10** of the bill repeals Part VII of ch. 468, F.S., and eliminates the regulation of talent agencies by the department. According to the department, three disciplinary orders were issued against talent agencies in the three previous fiscal years; two involved minor violations for failure to include the talent agency's license number in advertisements. The financial account of the licensing program has been in a perpetual deficit since creation of talent agency licensure in 1986.<sup>17</sup>

**Sections 11** through **20** of the bill amend Part IX of ch. 468, F.S., to eliminate all licensing requirements for athlete agents. According to the department, no disciplinary orders were issued against athlete agents in the previous three fiscal years.<sup>18</sup> Certain civil and criminal causes of action against athlete agents remain effective.

**Sections 21** and **22** of the bill amend ch. 469, F.S., to remove the requirement that an asbestos contractor obtain a separate business license in addition to an individual license. No disciplinary orders against a licensed asbestos business were issued in the three previous fiscal years. Asbestos contractors must qualify the business organizations they supervise and are liable for the actions of those businesses. Asbestos contractors must inform the department of any change in their relationship with the qualified business, and a qualified business has 60 days to obtain another asbestos contractor to serve as qualifying agent.

**Sections 23** through **28** of the bill amend ch. 477, F.S., to eliminate registration requirements for persons engaged in hair wrapping, body wrapping, and nail polishing. According to the department, these services are limited to non-invasive procedures and the use of harmful

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<sup>15</sup> See 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 1050, Dec. 16, 2015 (on file with Senate Committee on Regulated Industries) at 4-5.

<sup>16</sup> *Id.* at 4.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

chemicals is prohibited. The Board of Cosmetology issued two disciplinary orders against body wrappers in the three previous fiscal years, and neither involved injury to a consumer.

The Board of Cosmetology issued nine disciplinary orders against hair wrappers in the three previous fiscal years; six licensees were disciplined for practicing with an expired license or failing to timely renew their salon license.

The Board of Cosmetology issued three disciplinary orders against licensed cosmetologists or cosmetology salons for matters involving nail polishing in the three previous fiscal years. Two were for unlicensed activity, and one involved a nail specialist practicing with an expired license. None involved injury to a consumer.

According to the department, these 14 orders are one-half of one percent of the 2,690 disciplinary orders issued by the Board of Cosmetology during the last three fiscal years.

**Sections 29 through 32** of the bill amend ch. 481, F.S., to remove the requirement that architects and interior designers obtain a separate business license in addition to an individual license. The bill provides that architects and interior designers qualify their business organization with their individual licenses. The bill provides that architects and interior designers must inform the department of any change in their relationship with the qualified business, and the business has 60 days to obtain another qualifying architect or interior designer.

The bill amends s. 481.219(2)(b), F.S., to provide that the board may deny an application to qualify a business organization, if the applicant (or others identified in the application as partners, officers, directors, or stockholders who are also officers or directors) “has been involved in past disciplinary actions or on any grounds for which an individual registration or certification may be denied.” *See* lines 632-637.

According to the department, in the three previous fiscal years, the Board of Architecture and Interior Design disciplined licensed architecture businesses only six times in cases that did not also involve discipline against the supervising architect; generally, the licensed business was cited for operating without a supervising architect or for failure to include license numbers in advertisements.

The Board of Architecture and Interior Design disciplined licensed interior design businesses only four times in the three previous fiscal years in cases that did not also involve discipline against the qualifying interior designer. In three of the four disciplinary cases, the business license was retained by the business after the qualifying interior designer had left the firm.

**Sections 33 through 38** of the bill amend Part II of ch. 481, F.S., to remove the requirement that landscape architects obtain a separate business license in addition to an individual license. The bill provides that landscape architects must qualify their business organization with their individual licenses and will be liable for the actions of the business organizations they qualify. The bill provides that landscape architects must inform the department of any change in their relationship with the qualified business, and the business has one month to obtain another qualifying landscape architect. According to the department, the Board of Landscape

Architecture and Design issued no disciplinary orders against landscape architecture businesses during the three previous fiscal years.

**Sections 39 and 40** of the bill amend s. 489.503, F.S., to exempt from licensure as an electrical or alarm system contractor, those persons engaged in the installation or repair of low voltage or communication cabling. Low voltage cabling is limited to a maximum of 98 volts. Section 489.503, F.S., already exempts from licensure those employed by cable and telephone companies, who engage in the installation, maintenance, repair, etc. of systems relating to the transmission of voice and data. The bill exempts all persons from the licensure requirement, whether or not they are employed by a cable and telephone company. According to the department, the Electrical Contractors' Licensing Board issued no disciplinary orders for such work in the three previous fiscal years.

The bill provides that a person installing low voltage landscape lighting that contains a factory-installed electrical cord with a plug and does not require installation or wiring is exempt from licensure requirements. The proposed exemption does not permit the alteration of a home's internal electrical system. According to the department, the Electrical Contractors' Licensing Board issued no disciplinary orders against licensees providing these services during the three previous fiscal years.

The bill provides that persons who perform only sales or installation of wireless alarm systems, other than fire alarms, in a single family residence, are not required to complete the 14 hours of training required of burglar alarm system agents. Burglar alarm system agents installing a wireless system are required to be supervised by a properly licensed electrical or alarm system contractor who is responsible for ensuring proper installation of the alarm system. According to the department, the Electrical Contractors Licensing Board issued no disciplinary orders in the three previous fiscal years relating to this supervision requirement.

The bill provides a July 1, 2016, effective date.

#### **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:**

According to the department, licensees will receive the benefit of fee reductions in the amounts shown below:

- Condominiums: (Yacht and Ship Brokers), approximately \$1,200 in Fiscal Year 2015-2016, \$6,100 in Fiscal Year 2016-2017, \$2,600 in Fiscal Year 2017-2018, and \$6,100 in Fiscal Year 2018-2019; and
- Professions: approximately \$283,100 in Fiscal Year 2015-2016, \$346,059 in Fiscal Year 2016-2017, \$1,192,274 in Fiscal Year 2017-2018, and \$346,059 in Fiscal Year 2018-2019.

**C. Government Sector Impact:**

According to the department<sup>19</sup> and as shown in its summary below, a reduction in state revenue is anticipated to be \$2,183,492 from Fiscal Year 2015-2016 to Fiscal Year 2018-2019). As a result, there will be a reduction of approximately \$174,679 in the 8% revenue service charge sent to General Revenue.

**VI.**

	2015-16	2016-17	2017-18	2018-19
Revenues: License fees	Condominiums (Yacht and Ship Brokers) (\$1,200)  Professions (\$283,100)	Condominiums (Yacht and Ship Brokers) (\$6,100)  Professions (\$346,059)	Condominiums (Yacht and Ship Brokers) (\$2,600)  Professions (\$1,192,274)	Condominiums (Yacht and Ship Brokers) (\$6,100)  Professions (\$346,059)
Expenditures: Surcharge to GR (non-operating)	Condominiums (Yacht and Ship Brokers) (\$96)  Professions (\$22,648)	Condominiums (Yacht and Ship Brokers) (\$488)  Professions (\$27,685)	Condominiums (Yacht and Ship Brokers) (\$208)  Professions (\$95,382)	Condominiums (Yacht and Ship Brokers) (\$488)  Professions (\$27,685)

**VII. Technical Deficiencies:**

None.

<sup>19</sup> See 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 1050, Dec. 16, 2015 (on file with Senate Committee on Regulated Industries) at 8.

**VIII. Related Issues:**

None.

**IX. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 326.004, 447.02, 447.09, 468.451, 468.452, 468.454, 468.45615, 468.4565, 469.006, 469.009, 477.0132, 477.0135, 477.019, 477.026, 477.0265, 477.029, 481.203, 481.219, 481.221, 481.229, 481.303, 481.321, 481.311, 481.317, 481.319, 481.329, 489.503, and 489.518.

This bill repeals the following sections of the Florida Statutes: 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, 468.401, 468.402, 468.403, 468.404, 468.405, 468.406, 468.407, 468.408, 468.409, 468.410, 468.411, 468.412, 468.413, 468.414, 468.415, 468.453, 468.4536, 468.456, 468.4561, and 468.457.

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

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

**CS by the Committee on Regulated Industries on February 2, 2016:**

The CS deletes the exemption proposed for veterinary acupressure or veterinary massage. It removes joint and several liability of a licensed qualifying agent for a business organization offering architectural or interior design services, for any damages resulting from the actions of the organization. All provisions relating to certificates of authorization for the practice of professional geology and qualification of the organization by active licensed professional geologists in the state were removed from the bill.

**B. Amendments:**

None.

By Senator Brandes

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1                   A bill to be entitled  
2           An act relating to regulated professions and  
3           occupations; amending s. 326.004, F.S.; deleting a  
4           requirement that yacht and ship brokers maintain a  
5           separate license for each branch office and related  
6           fees; amending s. 447.02, F.S.; deleting a definition;  
7           repealing s. 447.04, F.S., relating to business  
8           agents, licenses, and permits; repealing s. 447.041,  
9           F.S., relating to hearings; repealing s. 447.045,  
10          F.S., relating to certain confidential information;  
11          repealing s. 447.06, F.S., relating to the required  
12          registration of labor organizations; amending s.  
13          447.09, F.S.; deleting prohibitions against specified  
14          actions; repealing s. 447.12, F.S., relating to  
15          registration fees; repealing s. 447.16, F.S., relating  
16          to the applicability of ch. 447, F.S.; repealing part  
17          VII of ch. 468, F.S., relating to the regulation of  
18          talent agencies; amending s. 468.451, F.S.; revising  
19          legislative intent related to the regulation of  
20          athlete agents; reordering and amending s. 468.452,  
21          F.S.; deleting the term "department"; repealing s.  
22          468.453, F.S., relating to the licensure of athlete  
23          agents; repealing s. 468.4536, F.S., relating to  
24          renewal of such licenses; amending s. 468.454, F.S.;  
25          revising the information that must be stated in agent  
26          contracts; deleting a condition under which an agent  
27          contract is void and unenforceable; repealing s.  
28          468.456, F.S., relating to prohibited acts for athlete  
29          agents; repealing s. 468.4561, F.S., relating to

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30 unlicensed activity and penalties for violations;  
31 amending s. 468.45615, F.S.; conforming provisions to  
32 changes made by the act; amending s. 468.4565, F.S.;  
33 deleting provisions authorizing the Department of  
34 Business and Professional Regulation to access and  
35 inspect certain records of athlete agents and related  
36 disciplinary actions and subpoena powers; repealing s.  
37 468.457, F.S., relating to rulemaking authority;  
38 amending s. 469.006, F.S.; requiring that a license be  
39 in the name of a qualifying agent rather than the name  
40 of a business organization; requiring the qualifying  
41 agent, rather than the business organization, to  
42 report certain changes in information; conforming  
43 provisions to changes made by the act; amending s.  
44 469.009, F.S.; deleting the authority of the  
45 department to reprimand, censure, or impose probation  
46 on certain business organizations; amending s.  
47 474.203, F.S.; excluding veterinary acupuncture and  
48 massage from certain provisions in ch. 474, F.S.;  
49 defining terms; amending s. 477.0132, F.S.; excluding  
50 the practices of hair wrapping and body wrapping from  
51 regulation under the Florida Cosmetology Act; amending  
52 s. 477.0135, F.S.; providing that a license or  
53 registration is not required for a person whose  
54 occupation or practice is confined solely to adding  
55 polish to nails or solely to hair wrapping or body  
56 wrapping; amending ss. 477.019, 477.026, 477.0265, and  
57 477.029, F.S.; conforming provisions to changes made  
58 by the act; amending s. 481.203, F.S.; defining the



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59 term "business organization"; deleting the definition  
60 of the term "certificate of authorization"; amending  
61 s. 481.219, F.S.; revising the process by which a  
62 business organization obtains the requisite license to  
63 perform architectural services; requiring that a  
64 licensee or an applicant apply to qualify a business  
65 organization under certain circumstances; specifying  
66 application requirements; authorizing the Board of  
67 Architecture and Interior Design to deny an  
68 application under certain circumstances; requiring  
69 that a qualifying agent be a registered architect or a  
70 registered interior designer under certain  
71 circumstances; requiring that a qualifying agent  
72 notify the department when she or he ceases to be  
73 affiliated with a business organization; prohibiting a  
74 business organization from engaging in certain  
75 practices until it is qualified by a qualifying agent;  
76 authorizing a business organization to proceed with  
77 specified contracts under a temporary certificate in  
78 certain circumstances; defining the term "incomplete  
79 contract"; requiring the qualifying agent to give  
80 written notice to the department before engaging in  
81 practice under her or his own name or in affiliation  
82 with another business organization; requiring the  
83 board to certify an applicant to qualify one or more  
84 business organizations or to operate using a  
85 fictitious name under certain circumstances;  
86 specifying that a qualifying agent for a business  
87 organization is jointly and severally liable with the

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88 business organization for certain damages; conforming  
89 provisions to changes made by the act; amending ss.  
90 481.221 and 481.229, F.S.; conforming provisions to  
91 changes made by the act; reordering and amending s.  
92 481.303, F.S.; deleting the term "certificate of  
93 authorization"; amending s. 481.321, F.S.; revising  
94 provisions that require persons to display certificate  
95 numbers under certain circumstances; conforming  
96 provisions to changes made by the act; amending ss.  
97 481.311, 481.317, and 481.319, F.S.; conforming  
98 provisions to changes made by the act; amending s.  
99 481.329, F.S.; conforming a cross-reference; amending  
100 s. 489.503, F.S.; deleting an exemption from  
101 regulation for certain persons; exempting a person who  
102 installs certain low-voltage landscape lighting from  
103 specified requirements; amending s. 489.518, F.S.;  
104 exempting certain persons from initial training for  
105 burglar alarm system agents; amending s. 492.111,  
106 F.S.; revising the requirements for an individual to  
107 practice or offer to practice professional geology  
108 through a firm, corporation, or partnership; requiring  
109 a firm, corporation, or partnership to be qualified by  
110 one or more individuals licensed as a professional  
111 geologist under certain circumstances; revising  
112 provisions specifying which persons must notify the  
113 department of changes in the geologist of record;  
114 deleting provisions relating to certificates of  
115 authorization; conforming provisions to changes made  
116 by the act; amending ss. 492.104, 492.113, and

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117 492.115, F.S.; conforming provisions to changes made  
118 by the act; providing an effective date.  
119

120 Be It Enacted by the Legislature of the State of Florida:  
121

122 Section 1. Subsection (13) of section 326.004, Florida  
123 Statutes, is amended to read:

124 326.004 Licensing.—

125 (13) Each broker must maintain a principal place of  
126 business in this state and may establish branch offices in the  
127 state. ~~A separate license must be maintained for each branch  
128 office. The division shall establish by rule a fee not to exceed  
129 \$100 for each branch office license.~~

130 Section 2. Subsection (3) of section 447.02, Florida  
131 Statutes, is amended to read:

132 447.02 Definitions.—The following terms, when used in this  
133 chapter, shall have the meanings ascribed to them in this  
134 section:

135 ~~(3) The term "department" means the Department of Business  
136 and Professional Regulation.~~

137 Section 3. Section 447.04, Florida Statutes, is repealed.

138 Section 4. Section 447.041, Florida Statutes, is repealed.

139 Section 5. Section 447.045, Florida Statutes, is repealed.

140 Section 6. Section 447.06, Florida Statutes, is repealed.

141 Section 7. Subsections (6) and (8) of section 447.09,  
142 Florida Statutes, are amended to read:

143 447.09 Right of franchise preserved; penalties.—It shall be  
144 unlawful for any person:

145 ~~(6) To act as a business agent without having obtained and~~

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146 ~~possessing a valid and subsisting license or permit.~~

147 ~~(8) To make any false statement in an application for a~~  
148 ~~license.~~

149 Section 8. Section 447.12, Florida Statutes, is repealed.

150 Section 9. Section 447.16, Florida Statutes, is repealed.

151 Section 10. Part VII of chapter 468, Florida Statutes,  
152 consisting of ss. 468.401, 468.402, 468.403, 468.404, 468.405,  
153 468.406, 468.407, 468.408, 468.409, 468.410, 468.411, 468.412,  
154 468.413, 468.414, and 468.415, is repealed.

155 Section 11. Section 468.451, Florida Statutes, is amended  
156 to read:

157 468.451 Legislative findings and intent.—The Legislature  
158 finds that dishonest or unscrupulous practices by agents who  
159 solicit representation of student athletes can cause significant  
160 harm to student athletes and the academic institutions for which  
161 they play. It is the intent of the Legislature to provide civil  
162 and criminal causes of action against athlete agents to protect  
163 the interests of student athletes and academic institutions ~~by~~  
164 ~~regulating the activities of athlete agents.~~

165 Section 12. Subsections (4) through (7) of section 468.452,  
166 Florida Statutes, are reordered and amended to read:

167 468.452 Definitions.—For purposes of this part, the term:

168 ~~(4) "Department" means the Department of Business and~~  
169 ~~Professional Regulation.~~

170 (6)~~(5)~~ "Student athlete" means any student who:

171 (a) Resides in Florida, has informed, in writing, a college  
172 or university of the student's intent to participate in that  
173 school's intercollegiate athletics, or who does participate in  
174 that school's intercollegiate athletics and is eligible to do

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175 so; or

176 (b) Does not reside in Florida, but has informed, in  
177 writing, a college or university in Florida of the student's  
178 intent to participate in that school's intercollegiate  
179 athletics, or who does participate in that school's  
180 intercollegiate athletics and is eligible to do so.

181 (4)~~(6)~~ "Financial services" means the counseling on or the  
182 making or execution of investment and other financial decisions  
183 by the agent on behalf of the student athlete.

184 (5)~~(7)~~ "Participation" means practicing, competing, or  
185 otherwise representing a college or university in  
186 intercollegiate athletics.

187 Section 13. Section 468.453, Florida Statutes, is repealed.

188 Section 14. Section 468.4536, Florida Statutes, is  
189 repealed.

190 Section 15. Subsections (2) and (12) of section 468.454,  
191 Florida Statutes, are amended to read:

192 468.454 Contracts.—

193 (2) An agent contract must state:

194 (a) The amount and method of calculating the consideration  
195 to be paid by the student athlete for services to be provided by  
196 the athlete agent and any other consideration the agent has  
197 received or will receive from any other source under the  
198 contract;

199 (b) The name of any person ~~not listed in the licensure~~  
200 ~~application~~ who will be compensated because the student athlete  
201 signed the agent contract;

202 (c) A description of any expenses that the student athlete  
203 agrees to reimburse;

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204 (d) A description of the services to be provided to the  
205 student athlete;

206 (e) The duration of the contract; and

207 (f) The date of execution.

208 ~~(12) An agent contract between a student athlete and a~~  
209 ~~person not licensed under this part is void and unenforceable.~~

210 Section 16. Section 468.456, Florida Statutes, is repealed.

211 Section 17. Section 468.4561, Florida Statutes, is  
212 repealed.

213 Section 18. Section 468.45615, Florida Statutes, is amended  
214 to read:

215 468.45615 Provision of illegal inducements to athletes  
216 ~~prohibited; penalties; license suspension.-~~

217 (1) A Any person who offers anything of value to another  
218 person to induce a student athlete to enter into an agreement by  
219 which the athlete agent will represent the student athlete  
220 commits violates s. 468.456(1)(f) is guilty of a felony of the  
221 second degree, punishable as provided in s. 775.082, s. 775.083,  
222 s. 775.084, s. 775.089, or s. 775.091. Negotiations regarding an  
223 athlete agent's fee are not considered an inducement.

224 (2) (a) Regardless of whether adjudication is withheld, any  
225 person convicted or found guilty of, or entering a plea of nolo  
226 contendere to, the violation described in subsection (1) may  
227 ~~shall~~ not employ, utilize, or otherwise collaborate with an a  
228 ~~licensed or unlicensed~~ athlete agent in Florida to illegally  
229 recruit or solicit student athletes. Any person who violates the  
230 provisions of this subsection is guilty of a felony of the  
231 second degree, punishable as provided in s. 775.082, s. 775.083,  
232 s. 775.084, s. 775.089, or s. 775.091.

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233 (b) Regardless of whether adjudication is withheld, any  
234 person who knowingly actively assists in the illegal recruitment  
235 or solicitation of student athletes for a person who has been  
236 convicted or found guilty of, or entered a plea of nolo  
237 contendere to, a violation of this section is guilty of a felony  
238 of the second degree, punishable as provided in s. 775.082, s.  
239 775.083, s. 775.084, s. 775.089, or s. 775.091.

240 ~~(3) In addition to any other penalties provided in this~~  
241 ~~section, the court may suspend the license of the person pending~~  
242 ~~the outcome of any administrative action against the person by~~  
243 ~~the department.~~

244 (3)~~(4)~~ (a) An athlete agent, with the intent to induce a  
245 student athlete to enter into an agent contract, may not:

246 1. Give any materially false or misleading information or  
247 make a materially false promise or representation;

248 2. Furnish anything of value to a student athlete before  
249 the student athlete enters into the agent contract; or

250 3. Furnish anything of value to any individual other than  
251 the student athlete or another athlete agent.

252 (b) An athlete agent may not intentionally:

253 1. ~~Initiate contact with a student athlete unless licensed~~  
254 ~~under this part;~~

255 ~~2.~~ Refuse or fail to retain or permit inspection of the  
256 records required to be retained by s. 468.4565;

257 ~~3. Provide materially false or misleading information in an~~  
258 ~~application for licensure;~~

259 2.4. Predate or postdate an agent contract;

260 3.5. Fail to give notice of the existence of an agent  
261 contract as required by s. 468.454(6); or

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262 ~~4.6.~~ Fail to notify a student athlete before the student  
263 athlete signs or otherwise authenticates an agent contract for a  
264 sport that the signing or authentication may make the student  
265 athlete ineligible to participate as a student athlete in that  
266 sport.

267 (c) An athlete agent who violates this subsection commits a  
268 felony of the second degree, punishable as provided in s.  
269 775.082, s. 775.083, or s. 775.084.

270 Section 19. Section 468.4565, Florida Statutes, is amended  
271 to read:

272 468.4565 Business records requirement.—

273 ~~(1)~~ An athlete agent shall establish and maintain complete  
274 financial and business records. The athlete agent shall save  
275 each entry into a financial or business record for at least 5  
276 years after ~~from~~ the date of entry. These records must include:

277 (1) ~~(a)~~ The name and address of each individual represented  
278 by the athlete agent;

279 (2) ~~(b)~~ Any agent contract entered into by the athlete  
280 agent; and

281 (3) ~~(c)~~ Any direct costs incurred by the athlete agent in  
282 the recruitment or solicitation of a student athlete to enter  
283 into an agent contract.

284 ~~(2) The department shall have access to and shall have the~~  
285 ~~right to inspect and examine the financial or business records~~  
286 ~~of an athlete agent during normal business hours. Refusal or~~  
287 ~~failure of an athlete agent to provide the department access to~~  
288 ~~financial and business records shall be the basis for~~  
289 ~~disciplinary action by the department pursuant to s. 455.225.~~  
290 ~~The department may exercise its subpoena powers to obtain the~~



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291 ~~financial and business records of an athlete agent.~~

292 Section 20. Section 468.457, Florida Statutes, is repealed.

293 Section 21. Paragraphs (a) and (e) of subsection (2),  
294 subsection (3), paragraph (b) of subsection (4), and subsection  
295 (6) of section 469.006, Florida Statutes, are amended to read:

296 469.006 Licensure of business organizations; qualifying  
297 agents.—

298 (2) (a) If the applicant proposes to engage in consulting or  
299 contracting as a partnership, corporation, business trust, or  
300 other legal entity, or in any name other than the applicant's  
301 legal name, the ~~legal entity must apply for licensure through a~~  
302 ~~qualifying agent or the~~ individual applicant must apply for  
303 licensure under the name of the business organization ~~fictitious~~  
304 ~~name.~~

305 (e) ~~A~~ The license, ~~when issued upon application of a~~  
306 ~~business organization,~~ must be in the name of the qualifying  
307 agent business organization, and the name of the business  
308 organization ~~qualifying agent~~ must be noted on the license  
309 ~~thereon.~~ If there is a change in any information that is  
310 required to be stated on the application, the qualifying agent  
311 ~~business organization~~ shall, within 45 days after such change  
312 occurs, mail the correct information to the department.

313 (3) The qualifying agent must ~~shall~~ be licensed under this  
314 chapter in order for the business organization to be qualified  
315 ~~licensed~~ in the category of the business conducted for which the  
316 qualifying agent is licensed. If any qualifying agent ceases to  
317 be affiliated with such business organization, the agent shall  
318 so inform the department. In addition, if such qualifying agent  
319 is the only licensed individual affiliated with the business

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320 organization, the business organization shall notify the  
321 department of the termination of the qualifying agent and has  
322 ~~shall have~~ 60 days after ~~from~~ the date of termination of the  
323 qualifying agent's affiliation with the business organization ~~in~~  
324 ~~which~~ to employ another qualifying agent. The business  
325 organization may not engage in consulting or contracting until a  
326 qualifying agent is employed, unless the department has granted  
327 a temporary nonrenewable license to the financially responsible  
328 officer, the president, the sole proprietor, a partner, or, in  
329 the case of a limited partnership, the general partner, who  
330 assumes all responsibilities of a primary qualifying agent for  
331 the entity. This temporary license only allows ~~shall only allow~~  
332 the entity to proceed with incomplete contracts.

333 (4)

334 (b) Upon a favorable determination by the department, after  
335 investigation of the financial responsibility, credit, and  
336 business reputation of the qualifying agent and the new business  
337 organization, the department shall issue, without any  
338 examination, a new license in the qualifying agent's business  
339 ~~organization's~~ name, and the name of the business organization  
340 ~~qualifying agent~~ shall be noted thereon.

341 (6) Each qualifying agent shall pay the department an  
342 amount equal to the original fee for licensure ~~of a new business~~  
343 ~~organization.~~ if the qualifying agent for a business  
344 organization desires to qualify additional business  
345 organizations. 7 The department shall require the agent to  
346 present evidence of supervisory ability and financial  
347 responsibility of each such organization. Allowing a licensee to  
348 qualify more than one business organization must ~~shall~~ be

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349 conditioned upon the licensee showing that the licensee has both  
 350 the capacity and intent to adequately supervise each business  
 351 organization. The department may ~~shall~~ not limit the number of  
 352 business organizations that ~~which~~ the licensee may qualify  
 353 except upon the licensee's failure to provide such information  
 354 as is required under this subsection or upon a finding that the  
 355 ~~such~~ information or evidence ~~as is~~ supplied is incomplete or  
 356 unpersuasive in showing the licensee's capacity and intent to  
 357 comply with the requirements of this subsection. A qualification  
 358 for an additional business organization may be revoked or  
 359 suspended upon a finding by the department that the licensee has  
 360 failed in the licensee's responsibility to adequately supervise  
 361 the operations of the business organization. Failure to  
 362 adequately supervise the operations of a business organization  
 363 is ~~shall be~~ grounds for denial to qualify additional business  
 364 organizations.

365 Section 22. Subsection (1) of section 469.009, Florida  
 366 Statutes, is amended to read:

367 469.009 License revocation, suspension, and denial of  
 368 issuance or renewal.—

369 (1) The department may revoke, suspend, or deny the  
 370 issuance or renewal of a license; reprimand, censure, or place  
 371 on probation any contractor, consultant, or financially  
 372 responsible officer, ~~or business organization~~; require financial  
 373 restitution to a consumer; impose an administrative fine not to  
 374 exceed \$5,000 per violation; require continuing education; or  
 375 assess costs associated with any investigation and prosecution  
 376 if the contractor or consultant, or business organization or  
 377 officer or agent thereof, is found guilty of any of the

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378 following acts:

379 (a) Willfully or deliberately disregarding or violating the  
380 health and safety standards of the Occupational Safety and  
381 Health Act of 1970, the Construction Safety Act, the National  
382 Emission Standards for Asbestos, the Environmental Protection  
383 Agency Asbestos Abatement Projects Worker Protection Rule, the  
384 Florida Statutes or rules promulgated thereunder, or any  
385 ordinance enacted by a political subdivision of this state.

386 (b) Violating any provision of chapter 455.

387 (c) Failing in any material respect to comply with the  
388 provisions of this chapter or any rule promulgated hereunder.

389 (d) Acting in the capacity of an asbestos contractor or  
390 asbestos consultant under any license issued under this chapter  
391 except in the name of the licensee as set forth on the issued  
392 license.

393 (e) Proceeding on any job without obtaining all applicable  
394 approvals, authorizations, permits, and inspections.

395 (f) Obtaining a license by fraud or misrepresentation.

396 (g) Being convicted or found guilty of, or entering a plea  
397 of nolo contendere to, regardless of adjudication, a crime in  
398 any jurisdiction which directly relates to the practice of  
399 asbestos consulting or contracting or the ability to practice  
400 asbestos consulting or contracting.

401 (h) Knowingly violating any building code, lifesafety code,  
402 or county or municipal ordinance relating to the practice of  
403 asbestos consulting or contracting.

404 (i) Performing any act which assists a person or entity in  
405 engaging in the prohibited unlicensed practice of asbestos  
406 consulting or contracting, if the licensee knows or has

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407 reasonable grounds to know that the person or entity was  
408 unlicensed.

409 (j) Committing mismanagement or misconduct in the practice  
410 of contracting that causes financial harm to a customer.  
411 Financial mismanagement or misconduct occurs when:

412 1. Valid liens have been recorded against the property of a  
413 contractor's customer for supplies or services ordered by the  
414 contractor for the customer's job; the contractor has received  
415 funds from the customer to pay for the supplies or services; and  
416 the contractor has not had the liens removed from the property,  
417 by payment or by bond, within 75 days after the date of such  
418 liens;

419 2. The contractor has abandoned a customer's job and the  
420 percentage of completion is less than the percentage of the  
421 total contract price paid to the contractor as of the time of  
422 abandonment, unless the contractor is entitled to retain such  
423 funds under the terms of the contract or refunds the excess  
424 funds within 30 days after the date the job is abandoned; or

425 3. The contractor's job has been completed, and it is shown  
426 that the customer has had to pay more for the contracted job  
427 than the original contract price, as adjusted for subsequent  
428 change orders, unless such increase in cost was the result of  
429 circumstances beyond the control of the contractor, was the  
430 result of circumstances caused by the customer, or was otherwise  
431 permitted by the terms of the contract between the contractor  
432 and the customer.

433 (k) Being disciplined by any municipality or county for an  
434 act or violation of this chapter.

435 (l) Failing in any material respect to comply with the

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436 provisions of this chapter, or violating a rule or lawful order  
437 of the department.

438 (m) Abandoning an asbestos abatement project in which the  
439 asbestos contractor is engaged or under contract as a  
440 contractor. A project may be presumed abandoned after 20 days if  
441 the contractor terminates the project without just cause and  
442 without proper notification to the owner, including the reason  
443 for termination; if the contractor fails to reasonably secure  
444 the project to safeguard the public while work is stopped; or if  
445 the contractor fails to perform work without just cause for 20  
446 days.

447 (n) Signing a statement with respect to a project or  
448 contract falsely indicating that the work is bonded; falsely  
449 indicating that payment has been made for all subcontracted  
450 work, labor, and materials which results in a financial loss to  
451 the owner, purchaser, or contractor; or falsely indicating that  
452 workers' compensation and public liability insurance are  
453 provided.

454 (o) Committing fraud or deceit in the practice of asbestos  
455 consulting or contracting.

456 (p) Committing incompetency or misconduct in the practice  
457 of asbestos consulting or contracting.

458 (q) Committing gross negligence, repeated negligence, or  
459 negligence resulting in a significant danger to life or property  
460 in the practice of asbestos consulting or contracting.

461 (r) Intimidating, threatening, coercing, or otherwise  
462 discouraging the service of a notice to owner under part I of  
463 chapter 713 or a notice to contractor under chapter 255 or part  
464 I of chapter 713.

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465 (s) Failing to satisfy, within a reasonable time, the terms  
466 of a civil judgment obtained against the licensee, or the  
467 business organization qualified by the licensee, relating to the  
468 practice of the licensee's profession.

469  
470 For the purposes of this subsection, construction is considered  
471 to be commenced when the contract is executed and the contractor  
472 has accepted funds from the customer or lender.

473 Section 23. Subsection (9) is added to section 474.203,  
474 Florida Statutes, to read:

475 474.203 Exemptions.—This chapter does not apply to:

476 (9) The performance of veterinary acupressure or veterinary  
477 massage.

478 (a) For purposes of this subsection, the term "veterinary  
479 acupressure" means the stimulation with finger pressure, rather  
480 than the insertion of needles, of the same points on an animal's  
481 body which are targeted in acupuncture. The term does not  
482 include the prescribing of drugs or the diagnosis of or  
483 prognosis for a medical condition of the animal.

484 (b) For the purposes of this subsection, the term  
485 "veterinary massage" means the use of fingers, hands, and  
486 machines to manipulate the animal's soft tissues to improve the  
487 healing and recovery of the animal. The term does not include  
488 the prescribing of drugs or the diagnosis of or prognosis for a  
489 medical condition of the animal.

490  
491 For the purposes of chapters 465 and 893, persons exempt  
492 pursuant to subsection (1), subsection (2), or subsection (4)  
493 are deemed to be duly licensed practitioners authorized by the

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494 laws of this state to prescribe drugs or medicinal supplies.

495 Section 24. Section 477.0132, Florida Statutes, is amended  
496 to read:

497 477.0132 Hair braiding, ~~hair wrapping, and body wrapping~~  
498 registration.-

499 (1) (a) Persons whose occupation or practice is confined  
500 solely to hair braiding must register with the department, pay  
501 the applicable registration fee, and take a two-day 16-hour  
502 course. The course shall be board approved and consist of 5  
503 hours of HIV/AIDS and other communicable diseases, 5 hours of  
504 sanitation and sterilization, 4 hours of disorders and diseases  
505 of the scalp, and 2 hours of studies regarding laws affecting  
506 hair braiding.

507 ~~(b) Persons whose occupation or practice is confined solely~~  
508 ~~to hair wrapping must register with the department, pay the~~  
509 ~~applicable registration fee, and take a one-day 6-hour course.~~  
510 ~~The course shall be board approved and consist of education in~~  
511 ~~HIV/AIDS and other communicable diseases, sanitation and~~  
512 ~~sterilization, disorders and diseases of the scalp, and studies~~  
513 ~~regarding laws affecting hair wrapping.~~

514 ~~(c) Unless otherwise licensed or exempted from licensure~~  
515 ~~under this chapter, any person whose occupation or practice is~~  
516 ~~body wrapping must register with the department, pay the~~  
517 ~~applicable registration fee, and take a two day 12-hour course.~~  
518 ~~The course shall be board approved and consist of education in~~  
519 ~~HIV/AIDS and other communicable diseases, sanitation and~~  
520 ~~sterilization, disorders and diseases of the skin, and studies~~  
521 ~~regarding laws affecting body wrapping.~~

522 ~~(d) Only the board may review, evaluate, and approve a~~



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523 course required of an applicant for registration under this  
524 subsection in the occupation or practice of hair braiding, ~~hair~~  
525 ~~wrapping, or body wrapping~~. A provider of such a course is not  
526 required to hold a license under chapter 1005.

527 (2) Hair braiding is, ~~hair wrapping, and body wrapping~~ are  
528 not required to be practiced in a cosmetology salon or specialty  
529 salon. When hair braiding, ~~hair wrapping, or body wrapping~~ is  
530 practiced outside a cosmetology salon or specialty salon,  
531 disposable implements must be used or all implements must be  
532 sanitized in a disinfectant approved for hospital use or  
533 approved by the federal Environmental Protection Agency.

534 (3) Pending issuance of registration, a person is eligible  
535 to practice hair braiding, ~~hair wrapping, or body wrapping~~ upon  
536 submission of a registration application that includes proof of  
537 successful completion of the education requirements and payment  
538 of the applicable fees required by this chapter.

539 Section 25. Subsections (7), (8), and (9) are added to  
540 section 477.0135, Florida Statutes, to read:

541 477.0135 Exemptions.—

542 (7) A license or registration is not required for a person  
543 whose occupation or practice is confined solely to adding polish  
544 to fingernails and toenails.

545 (8) A license or registration is not required for a person  
546 whose occupation or practice is confined solely to hair wrapping  
547 as defined in s. 477.013(10).

548 (9) A license or registration is not required for a person  
549 whose occupation or practice is confined solely to body wrapping  
550 as defined in s. 477.013(12).

551 Section 26. Paragraph (b) of subsection (7) of section

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552 477.019, Florida Statutes, is amended to read:

553 477.019 Cosmetologists; qualifications; licensure;  
554 supervised practice; license renewal; endorsement; continuing  
555 education.—

556 (7)

557 (b) Any person whose occupation or practice is confined  
558 solely to hair braiding, ~~hair wrapping, or body wrapping~~ is  
559 exempt from the continuing education requirements of this  
560 subsection.

561 Section 27. Paragraph (f) of subsection (1) of section  
562 477.026, Florida Statutes, is amended to read:

563 477.026 Fees; disposition.—

564 (1) The board shall set fees according to the following  
565 schedule:

566 (f) For hair braiders, ~~hair wrappers, and body wrappers,~~  
567 fees for registration shall not exceed \$25.

568 Section 28. Paragraph (f) of subsection (1) of section  
569 477.0265, Florida Statutes, is amended to read:

570 477.0265 Prohibited acts.—

571 (1) It is unlawful for any person to:

572 (f) Advertise or imply that skin care services ~~or body~~  
573 ~~wrapping, as performed under this chapter,~~ have any relationship  
574 to the practice of massage therapy as defined in s. 480.033(3),  
575 except those practices or activities defined in s. 477.013.

576 Section 29. Paragraph (a) of subsection (1) of section  
577 477.029, Florida Statutes, is amended to read:

578 477.029 Penalty.—

579 (1) It is unlawful for any person to:

580 (a) Hold himself or herself out as a cosmetologist,

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581 specialist, or ~~hair wrapper,~~ hair braider, ~~or body wrapper~~  
582 unless duly licensed or registered, or otherwise authorized, as  
583 provided in this chapter.

584 Section 30. Subsection (5) of section 481.203, Florida  
585 Statutes, is amended to read:

586 481.203 Definitions.—As used in this part:

587 (5) "Business organization" means a partnership, a limited  
588 liability company, a corporation, or an individual operating  
589 under a fictitious name ~~"Certificate of authorization" means a~~  
590 ~~certificate issued by the department to a corporation or~~  
591 ~~partnership to practice architecture or interior design.~~

592 Section 31. Section 481.219, Florida Statutes, is amended  
593 to read:

594 481.219 Business organization; qualifying agents  
595 ~~Certification of partnerships, limited liability companies, and~~  
596 ~~corporations.—~~

597 (1) A licensee may ~~The practice of or the offer to practice~~  
598 ~~architecture or interior design by licensees through a~~ business  
599 organization that offers ~~corporation, limited liability company,~~  
600 ~~or partnership offering~~ architectural or interior design  
601 services to the public, or through ~~by~~ a business organization  
602 that offers ~~corporation, limited liability company, or~~  
603 ~~partnership offering~~ architectural or interior design services  
604 to the public through such licensees ~~under this part~~ as agents,  
605 employees, officers, or partners, ~~is permitted, subject to the~~  
606 ~~provisions of this section.~~

607 (2) If a licensee or an applicant proposes to engage in the  
608 practice of architecture or interior design as a business  
609 organization, the licensee or applicant must apply to qualify

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610 ~~the business organization~~ For the purposes of this section, a  
611 ~~certificate of authorization shall be required for a~~  
612 ~~corporation, limited liability company, partnership, or person~~  
613 ~~practicing under a fictitious name, offering architectural~~  
614 ~~services to the public jointly or separately. However, when an~~  
615 ~~individual is practicing architecture in her or his own name,~~  
616 ~~she or he shall not be required to be certified under this~~  
617 ~~section. Certification under this subsection to offer~~  
618 ~~architectural services shall include all the rights and~~  
619 ~~privileges of certification under subsection (3) to offer~~  
620 ~~interior design services.~~

621 (a) An application to qualify a business organization must:

622 1. If the business is a partnership, state the names of the  
623 partnership and its partners.

624 2. If the business is a corporation, state the names of the  
625 corporation and its officers and directors and the name of each  
626 of its stockholders who is also an officer or a director.

627 3. If the business is operating under a fictitious name,  
628 state the fictitious name under which it is doing business.

629 4. If the business is not a partnership, a corporation, or  
630 operating under a fictitious name, state the name of such other  
631 legal entity and its members.

632 (b) The board may deny an application to qualify a business  
633 organization if the applicant or any person required to be named  
634 pursuant to paragraph (a) has been involved in past disciplinary  
635 actions or on any grounds for which an individual registration  
636 or certification may be denied.

637 (3) (a) A business organization may not engage in the  
638 practice of architecture unless its qualifying agent is a

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639 registered architect under this part. A business organization  
640 may not engage in the practice of interior design unless its  
641 qualifying agent is a registered architect or a registered  
642 interior designer under this part. A qualifying agent who  
643 terminates her or his affiliation with a business organization  
644 shall immediately notify the department of such termination. If  
645 the qualifying agent who terminates her or his affiliation is  
646 the only qualifying agent for a business organization, the  
647 business organization must be qualified by another qualifying  
648 agent within 60 days after the termination. Except as provided  
649 in paragraph (b), such a business organization may not engage in  
650 the practice of architecture or interior design until it is  
651 qualified by a qualifying agent.

652 (b) The executive director or chair of the board may grant  
653 a temporary, nonrenewable certificate or registration to a  
654 licensee in supervising control, the president, a managing  
655 member, a partner, or, in the case of a limited partnership, the  
656 general partner for the purpose of allowing the business  
657 organization to begin or continue work required under an  
658 incomplete contract. Such person shall assume all of the  
659 responsibilities of a qualifying agent. For purposes of this  
660 paragraph, the term "incomplete contract" means a contract that  
661 has been awarded to, or entered into by, the business  
662 organization before the termination of affiliation of the  
663 qualifying agent with the business organization or a contract on  
664 which the business organization was the low bidder and that is  
665 subsequently awarded to the business organization, regardless of  
666 whether any actual work has commenced under the contract before  
667 termination of affiliation by the qualifying agent with the

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668 business organization.

669 (c) A qualifying agent shall notify the department in  
670 writing before engaging in the practice of architecture or  
671 interior design in her or his own name or in affiliation with a  
672 different business organization, and she or he or such business  
673 organization shall supply the same information to the department  
674 as required of applicants under this part ~~For the purposes of~~  
675 ~~this section, a certificate of authorization shall be required~~  
676 ~~for a corporation, limited liability company, partnership, or~~  
677 ~~person operating under a fictitious name, offering interior~~  
678 ~~design services to the public jointly or separately. However,~~  
679 ~~when an individual is practicing interior design in her or his~~  
680 ~~own name, she or he shall not be required to be certified under~~  
681 ~~this section.~~

682 (4) All final construction documents and instruments of  
683 service which include drawings, specifications, plans, reports,  
684 or other papers or documents that involve ~~involving~~ the practice  
685 of architecture which are prepared or approved for the use of  
686 the business organization ~~corporation, limited liability~~  
687 ~~company, or partnership~~ and filed for public record within the  
688 state must ~~shall~~ bear the signature and seal of the licensee who  
689 prepared or approved them and the date on which they were  
690 sealed.

691 (5) All drawings, specifications, plans, reports, or other  
692 papers or documents prepared or approved for the use of the  
693 business organization ~~corporation, limited liability company, or~~  
694 ~~partnership~~ by an interior designer in her or his professional  
695 capacity and filed for public record within the state must ~~shall~~  
696 bear the signature and seal of the licensee who prepared or

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697 approved them and the date on which they were sealed.

698 ~~(6) The department shall issue a certificate of~~  
699 ~~authorization to any applicant who the board certifies as~~  
700 ~~qualified for a certificate of authorization and who has paid~~  
701 ~~the fee set in s. 481.207.~~

702 ~~(7) The board shall~~ allow ~~certify~~ an applicant to qualify  
703 one or more business organizations ~~as qualified for a~~  
704 ~~certificate of authorization~~ to offer architectural or interior  
705 design services, or to use a fictitious name to offer such  
706 services, if one of the following criteria is met ~~provided that:~~

707 (a) One or more of the principal officers of the  
708 corporation or limited liability company, or one or more  
709 partners of the partnership, and all personnel of the  
710 corporation, limited liability company, or partnership who act  
711 in its behalf in this state as architects, are registered as  
712 provided by this part. ~~;~~ ~~or~~

713 (b) One or more of the principal officers of the  
714 corporation or one or more partners of the partnership, and all  
715 personnel of the corporation, limited liability company, or  
716 partnership who act in its behalf in this state as interior  
717 designers, are registered as provided by this part.

718 ~~(8) The department shall adopt rules establishing a~~  
719 ~~procedure for the biennial renewal of certificates of~~  
720 ~~authorization.~~

721 ~~(9) The department shall renew a certificate of~~  
722 ~~authorization upon receipt of the renewal application and~~  
723 ~~biennial renewal fee.~~

724 ~~(7)-(10)~~ Each qualifying agent approved to qualify a  
725 business organization ~~partnership, limited liability company,~~

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726 ~~and corporation certified~~ under this section shall notify the  
727 department within 30 days of any change in the information  
728 contained in the application upon which the qualification  
729 ~~certification~~ is based. Any registered architect or interior  
730 designer who qualifies the business organization shall ensure  
731 ~~corporation, limited liability company, or partnership as~~  
732 ~~provided in subsection (7)~~ shall be responsible for ensuring  
733 responsible supervising control of projects of the business  
734 organization entity and upon termination of her or his  
735 employment with a business organization qualified partnership,  
736 ~~limited liability company, or corporation certified~~ under this  
737 section shall notify the department of the termination within 30  
738 days.

739 (8) A licensed qualifying agent for a business organization  
740 is jointly and severally liable with the business organization  
741 for any damages resulting from the actions of the business  
742 organization.

743 (9) ~~(11)~~ A business organization is not ~~No corporation,~~  
744 ~~limited liability company, or partnership~~ shall be relieved of  
745 responsibility for the conduct or acts of its agents, employees,  
746 or officers by reason of its compliance with this section.  
747 However, except as provided in s. 558.0035, the architect who  
748 signs and seals the construction documents and instruments of  
749 service is ~~shall be~~ liable for the professional services  
750 performed, and the interior designer who signs and seals the  
751 interior design drawings, plans, or specifications is ~~shall be~~  
752 liable for the professional services performed.

753 ~~(12) Disciplinary action against a corporation, limited~~  
754 ~~liability company, or partnership shall be administered in the~~



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755 ~~same manner and on the same grounds as disciplinary action~~  
756 ~~against a registered architect or interior designer,~~  
757 ~~respectively.~~

758 ~~(10)-(13) Nothing in~~ This section may not ~~shall~~ be construed  
759 to mean that a certificate of registration to practice  
760 architecture or interior design must ~~shall~~ be held by a business  
761 organization ~~corporation, limited liability company, or~~  
762 ~~partnership. Nothing in~~ This section does not prohibit ~~prohibits~~  
763 corporations, limited liability companies, and partnerships from  
764 joining together to offer architectural, engineering, interior  
765 design, surveying and mapping, and landscape architectural  
766 services, or any combination of such services, to the public if  
767 ~~provided that~~ each corporation, limited liability company, or  
768 partnership otherwise meets the requirements of law.

769 ~~(11)-(14) A business organization that is qualified by a~~  
770 registered architect may ~~Corporations, limited liability~~  
771 ~~companies, or partnerships holding a valid certificate of~~  
772 ~~authorization to practice architecture shall be permitted to use~~  
773 ~~in their title~~ the term "interior designer" or "registered  
774 interior designer" in its title. designer."

775 Section 32. Subsection (10) of section 481.221, Florida  
776 Statutes, is amended to read:

777 481.221 Seals; display of certificate number.—

778 (10) Each registered architect or interior designer or  
779 qualifying agent of a business organization must, ~~and each~~  
780 ~~corporation, limited liability company, or partnership holding a~~  
781 ~~certificate of authorization, shall include~~ her or his license  
782 ~~its certificate~~ number in any newspaper, telephone directory, or  
783 other advertising medium used by the registered architect or

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784 interior designer, or business organization ~~corporation, limited~~  
785 ~~liability company, or partnership~~. A business organization  
786 ~~corporation, limited liability company, or partnership~~ is not  
787 required to display the certificate number of individual  
788 registered architects or interior designers employed by or  
789 working within the business organization ~~corporation, limited~~  
790 ~~liability company, or partnership~~.

791 Section 33. Paragraphs (a) and (c) of subsection (5) of  
792 section 481.229, Florida Statutes, are amended to read:

793 481.229 Exceptions; exemptions from licensure.—

794 (5) (a) ~~Nothing contained in~~ This part does not prohibit  
795 ~~shall prevent~~ a registered architect or a qualified business  
796 organization ~~partnership, limited liability company, or~~  
797 ~~corporation holding a valid certificate of authorization to~~  
798 ~~provide architectural services from performing any interior~~  
799 ~~design service or from using the title "interior designer" or~~  
800 ~~"registered interior designer."~~

801 (c) Notwithstanding any other provision of this part, a  
802 registered architect or qualified business organization  
803 certified ~~any corporation, partnership, or person operating~~  
804 ~~under a fictitious name which holds a certificate of~~  
805 ~~authorization to provide architectural services~~ must ~~shall~~ be  
806 qualified, without fee, ~~for a certificate of authorization to~~  
807 provide interior design services upon submission of a completed  
808 application for qualification ~~therefor~~. ~~For corporations,~~  
809 ~~partnerships, and persons operating under a fictitious name~~  
810 ~~which hold a certificate of authorization to provide interior~~  
811 ~~design services, satisfaction of the requirements for renewal of~~  
812 ~~the certificate of authorization to provide architectural~~

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813 ~~services under s. 481.219 shall be deemed to satisfy the~~  
814 ~~requirements for renewal of the certificate of authorization to~~  
815 ~~provide interior design services under that section.~~

816 Section 34. Section 481.303, Florida Statutes, is reordered  
817 and amended to read:

818 481.303 Definitions.—As used in this chapter, the term:

819 (1) "Board" means the Board of Landscape Architecture.

820 (3)~~(2)~~ "Department" means the Department of Business and  
821 Professional Regulation.

822 (6)~~(3)~~ "Registered landscape architect" means a person who  
823 holds a license to practice landscape architecture in this state  
824 under the authority of this act.

825 (2)~~(4)~~ "Certificate of registration" means a license issued  
826 by the department to a natural person to engage in the practice  
827 of landscape architecture.

828 ~~(5) "Certificate of authorization" means a license issued~~  
829 ~~by the department to a corporation or partnership to engage in~~  
830 ~~the practice of landscape architecture.~~

831 (4)~~(6)~~ "Landscape architecture" means professional  
832 services, including, but not limited to, the following:

833 (a) Consultation, investigation, research, planning,  
834 design, preparation of drawings, specifications, contract  
835 documents and reports, responsible construction supervision, or  
836 landscape management in connection with the planning and  
837 development of land and incidental water areas, including the  
838 use of Florida-friendly landscaping as defined in s. 373.185,  
839 where, and to the extent that, the dominant purpose of such  
840 services or creative works is the preservation, conservation,  
841 enhancement, or determination of proper land uses, natural land

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842 features, ground cover and plantings, or naturalistic and  
843 aesthetic values;

844 (b) The determination of settings, grounds, and approaches  
845 for and the siting of buildings and structures, outdoor areas,  
846 or other improvements;

847 (c) The setting of grades, shaping and contouring of land  
848 and water forms, determination of drainage, and provision for  
849 storm drainage and irrigation systems where such systems are  
850 necessary to the purposes outlined herein; and

851 (d) The design of such tangible objects and features as are  
852 necessary to the purpose outlined herein.

853 (5)~~(7)~~ "Landscape design" means consultation for and  
854 preparation of planting plans drawn for compensation, including  
855 specifications and installation details for plant materials,  
856 soil amendments, mulches, edging, gravel, and other similar  
857 materials. Such plans may include only recommendations for the  
858 conceptual placement of tangible objects for landscape design  
859 projects. Construction documents, details, and specifications  
860 for tangible objects and irrigation systems shall be designed or  
861 approved by licensed professionals as required by law.

862 Section 35. Subsection (5) of section 481.321, Florida  
863 Statutes, is amended to read:

864 481.321 Seals; display of certificate number.—

865 (5) Each registered landscape architect must ~~and each~~  
866 ~~corporation or partnership holding a certificate of~~  
867 ~~authorization shall~~ include her or his ~~its~~ certificate number in  
868 any newspaper, telephone directory, or other advertising medium  
869 used by the registered landscape architect, corporation, or  
870 partnership. A corporation or partnership must ~~is not required~~

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871 ~~to~~ display the certificate number numbers of at least one  
872 officer, director, owner, or partner who is a individual  
873 registered landscape architect architects employed by or  
874 practicing with the corporation or partnership.

875 Section 36. Subsection (4) of section 481.311, Florida  
876 Statutes, is amended to read:

877 481.311 Licensure.—

878 ~~(4) The board shall certify as qualified for a certificate~~  
879 ~~of authorization any applicant corporation or partnership who~~  
880 ~~satisfies the requirements of s. 481.319.~~

881 Section 37. Subsection (2) of section 481.317, Florida  
882 Statutes, is amended to read:

883 481.317 Temporary certificates.—

884 ~~(2) Upon approval by the board and payment of the fee set~~  
885 ~~in s. 481.307, the department shall grant a temporary~~  
886 ~~certificate of authorization for work on one specified project~~  
887 ~~in this state for a period not to exceed 1 year to an out-of-~~  
888 ~~state corporation, partnership, or firm, provided one of the~~  
889 ~~principal officers of the corporation, one of the partners of~~  
890 ~~the partnership, or one of the principals in the fictitiously~~  
891 ~~named firm has obtained a temporary certificate of registration~~  
892 ~~in accordance with subsection (1).~~

893 Section 38. Section 481.319, Florida Statutes, is amended  
894 to read:

895 481.319 Corporate and partnership practice of landscape  
896 architecture; ~~certificate of authorization.~~—

897 (1) The practice of or offer to practice landscape  
898 architecture by registered landscape architects registered under  
899 this part through a corporation or partnership offering

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900 landscape architectural services to the public, or through a  
901 corporation or partnership offering landscape architectural  
902 services to the public through individual registered landscape  
903 architects as agents, employees, officers, or partners, is  
904 permitted, subject to the provisions of this section, if:

905 (a) One or more of the principal officers of the  
906 corporation, or partners of the partnership, and all personnel  
907 of the corporation or partnership who act in its behalf as  
908 landscape architects in this state are registered landscape  
909 architects; and

910 (b) One or more of the officers, one or more of the  
911 directors, one or more of the owners of the corporation, or one  
912 or more of the partners of the partnership is a registered  
913 landscape architect; ~~and~~

914 ~~(c) The corporation or partnership has been issued a~~  
915 ~~certificate of authorization by the board as provided herein.~~

916 (2) All documents involving the practice of landscape  
917 architecture which are prepared for the use of the corporation  
918 or partnership shall bear the signature and seal of a registered  
919 landscape architect.

920 (3) A landscape architect applying to practice in the name  
921 of a corporation must shall file with the  
922 department the names and addresses of all officers and board  
923 members of the corporation, including the principal officer or  
924 officers, duly registered to practice landscape architecture in  
925 this state and, also, of all individuals duly registered to  
926 practice landscape architecture in this state who shall be in  
927 responsible charge of the practice of landscape architecture by  
928 the corporation in this state. A landscape architect applying to

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929 practice in the name of a ~~An applicant~~ partnership must ~~shall~~  
930 file with the department the names and addresses of all partners  
931 of the partnership, including the partner or partners duly  
932 registered to practice landscape architecture in this state and,  
933 also, of an individual or individuals duly registered to  
934 practice landscape architecture in this state who shall be in  
935 responsible charge of the practice of landscape architecture by  
936 said partnership in this state.

937 (4) Each landscape architect qualifying a partnership or  
938 ~~and corporation licensed~~ under this part must ~~shall~~ notify the  
939 department within 1 month of any change in the information  
940 contained in the application upon which the license is based.  
941 Any landscape architect who terminates her or his ~~or her~~  
942 employment with a partnership or corporation licensed under this  
943 part shall notify the department of the termination within 1  
944 month.

945 (5) ~~Disciplinary action against a corporation or~~  
946 ~~partnership shall be administered in the same manner and on the~~  
947 ~~same grounds as disciplinary action against a registered~~  
948 ~~landscape architect.~~

949 ~~(6)~~ Except as provided in s. 558.0035, the fact that a  
950 registered landscape architect practices landscape architecture  
951 through a corporation or partnership as provided in this section  
952 does not relieve the landscape architect from personal liability  
953 for her or his ~~or her~~ professional acts.

954 Section 39. Subsection (5) of section 481.329, Florida  
955 Statutes, is amended to read:

956 481.329 Exceptions; exemptions from licensure.—

957 (5) This part does not prohibit any person from engaging in

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958 the practice of landscape design, as defined in s. 481.303(5) ~~s.~~  
959 ~~481.303(7)~~, or from submitting for approval to a governmental  
960 agency planting plans that are independent of, or a component  
961 of, construction documents that are prepared by a Florida-  
962 registered professional. Persons providing landscape design  
963 services shall not use the title, term, or designation  
964 "landscape architect," "landscape architectural," "landscape  
965 architecture," "L.A.," "landscape engineering," or any  
966 description tending to convey the impression that she or he is a  
967 landscape architect unless she or he is registered as provided  
968 in this part.

969 Section 40. Subsection (14) of section 489.503, Florida  
970 Statutes, is amended, and subsection (24) is added to that  
971 section, to read:

972 489.503 Exemptions.—This part does not apply to:

973 (14) The sale of, installation of, repair of, alteration  
974 of, addition to, or design of electrical wiring, fixtures,  
975 appliances, thermostats, apparatus, raceways, computers,  
976 customer premises equipment, customer premises wiring, and  
977 conduit, or any part thereof, ~~by an employee, contractor,~~  
978 ~~subcontractor, or affiliate of a company operating under a~~  
979 ~~certificate issued under chapter 364 or chapter 610, or under a~~  
980 ~~local franchise or right-of-way agreement,~~ if those items are  
981 for the purpose of transmitting data, voice, video, or other  
982 communications, or commands as part of a cable television,  
983 community antenna television, radio distribution,  
984 communications, or telecommunications system. An employee,  
985 subcontractor, contractor, or affiliate of a company that  
986 operates under a certificate issued under chapter 364 or chapter



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987 610, or under a local franchise or right-of-way agreement, is  
988 not subject to any local ordinance that requires a permit for  
989 work related to low-voltage electrical work, including related  
990 technical codes, regulations, and licensure. The scope of this  
991 exemption is limited to electrical circuits and equipment  
992 governed by the applicable provisions of Articles 725 (Classes 2  
993 and 3 circuits only), 770, 800, 810, and 820 of the National  
994 Electrical Code, current edition, or 47 C.F.R. part 68, ~~and~~  
995 ~~employees, contractors, and subcontractors of companies, and~~  
996 ~~affiliates thereof, operating under a certificate issued under~~  
997 ~~chapter 364 or chapter 610 or under a local franchise or right-~~  
998 ~~of-way agreement.~~ This subsection does not relieve any person  
999 from licensure as an alarm system contractor.

1000 (24) A person who installs low-voltage landscape lighting  
1001 that contains a factory-installed electrical cord with a plug  
1002 and does not require installation, wiring, or a modification to  
1003 the electrical wiring in a structure.

1004 Section 41. Present paragraphs (a) through (e) of  
1005 subsection (2) of section 489.518, Florida Statutes, are  
1006 redesignated as paragraphs (b) through (f), respectively, and a  
1007 new paragraph (a) is added to that subsection, to read:

1008 489.518 Alarm system agents.—

1009 (2) (a) A person who performs only sales or installations of  
1010 wireless alarm systems, other than fire alarm systems, in a  
1011 single-family residence is not required to complete the initial  
1012 training required for burglar alarm system agents.

1013 Section 42. Section 492.111, Florida Statutes, is amended  
1014 to read:

1015 492.111 Practice of professional geology by a firm,

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1016 corporation, or partnership; ~~certificate of authorization.~~—The  
1017 practice of, or offer to practice, professional geology by  
1018 individual professional geologists licensed under the provisions  
1019 of this chapter through a firm, corporation, or partnership  
1020 offering geological services to the public through individually  
1021 licensed professional geologists as agents, employees, officers,  
1022 or partners thereof is permitted subject to the provisions of  
1023 this chapter, if ~~provided that~~:

1024 (1) At all times that it offers geological services to the  
1025 public, the firm, corporation, or partnership is qualified by  
1026 ~~has on file with the department the name and license number of~~  
1027 one or more individuals who hold a current, active license as a  
1028 professional geologist in the state and are serving as a  
1029 geologist of record for the firm, corporation, or partnership. A  
1030 geologist of record may be any principal officer or employee of  
1031 such firm or corporation, or any partner or employee of such  
1032 partnership, who holds a current, active license as a  
1033 professional geologist in this state, or any other Florida-  
1034 licensed professional geologist with whom the firm, corporation,  
1035 or partnership has entered into a long-term, ongoing  
1036 relationship, as defined by rule of the board, to serve as one  
1037 of its geologists of record. ~~It shall be the responsibility of~~  
1038 ~~the firm, corporation, or partnership and~~ The geologist of  
1039 record shall ~~to~~ notify the department of any changes in the  
1040 relationship or identity of that geologist of record within 30  
1041 days after such change.

1042 (2) ~~The firm, corporation, or partnership has been issued a~~  
1043 ~~certificate of authorization by the department as provided in~~  
1044 ~~this chapter. For purposes of this section, a certificate of~~

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1045 ~~authorization shall be required of any firm, corporation,~~  
1046 ~~partnership, association, or person practicing under a~~  
1047 ~~fictitious name and offering geological services to the public;~~  
1048 ~~except that, when an individual is practicing professional~~  
1049 ~~geology in her or his own name, she or he shall not be required~~  
1050 ~~to obtain a certificate of authorization under this section.~~  
1051 ~~Such certificate of authorization shall be renewed every 2~~  
1052 ~~years.~~

1053 ~~(3)~~ All final geological papers or documents involving the  
1054 practice of the profession of geology which have been prepared  
1055 or approved for the use of such firm, corporation, or  
1056 partnership, for delivery to any person for public record with  
1057 the state, shall be dated and bear the signature and seal of the  
1058 professional geologist or professional geologists who prepared  
1059 or approved them.

1060 (3)~~(4)~~ Except as provided in s. 558.0035, the fact that a  
1061 licensed professional geologist practices through a corporation  
1062 or partnership does not relieve the registrant from personal  
1063 liability for negligence, misconduct, or wrongful acts committed  
1064 by her or him. The partnership and all partners are jointly and  
1065 severally liable for the negligence, misconduct, or wrongful  
1066 acts committed by their agents, employees, or partners while  
1067 acting in a professional capacity. Any officer, agent, or  
1068 employee of a corporation is personally liable and accountable  
1069 only for negligent acts, wrongful acts, or misconduct committed  
1070 by her or him or committed by any person under her or his direct  
1071 supervision and control, while rendering professional services  
1072 on behalf of the corporation. The personal liability of a  
1073 shareholder of a corporation, in her or his capacity as

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1074 shareholder, may be no greater than that of a shareholder-  
1075 employee of a corporation incorporated under chapter 607. The  
1076 corporation is liable up to the full value of its property for  
1077 any negligent acts, wrongful acts, or misconduct committed by  
1078 any of its officers, agents, or employees while they are engaged  
1079 on behalf of the corporation in the rendering of professional  
1080 services.

1081 ~~(5) The firm, corporation, or partnership desiring a~~  
1082 ~~certificate of authorization shall file with the department an~~  
1083 ~~application therefor, upon a form to be prescribed by the~~  
1084 ~~department, accompanied by the required application fee.~~

1085 ~~(6) The department may refuse to issue a certificate of~~  
1086 ~~authorization if any facts exist which would entitle the~~  
1087 ~~department to suspend or revoke an existing certificate of~~  
1088 ~~authorization or if the department, after giving persons~~  
1089 ~~involved a full and fair hearing, determines that any of the~~  
1090 ~~officers or directors of said firm or corporation, or partners~~  
1091 ~~of said partnership, have violated the provisions of s. 492.113.~~

1092 Section 43. Section 492.104, Florida Statutes, is amended  
1093 to read:

1094 492.104 Rulemaking authority.—The Board of Professional  
1095 Geologists may ~~has authority to~~ adopt rules pursuant to ss.  
1096 120.536(1) and 120.54 to implement this chapter. Every licensee  
1097 shall be governed and controlled by this chapter and the rules  
1098 adopted by the board. The board may establish ~~is authorized to~~  
1099 ~~set~~, by rule, fees for application, examination, ~~certificate of~~  
1100 ~~authorization~~, late renewal, initial licensure, and license  
1101 renewal. These fees may ~~should~~ not exceed the cost of  
1102 implementing the application, examination, initial licensure,

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1103 and license renewal or other administrative process and are  
1104 ~~shall be~~ established as follows:

1105 (1) The application fee may ~~shall~~ not exceed \$150 and is  
1106 ~~shall be~~ nonrefundable.

1107 (2) The examination fee may ~~shall~~ not exceed \$250, and the  
1108 fee may be apportioned to each part of a multipart examination.  
1109 The examination fee shall be refundable in whole or part if the  
1110 applicant is found to be ineligible to take any portion of the  
1111 licensure examination.

1112 (3) The initial license fee may ~~shall~~ not exceed \$100.

1113 (4) The biennial renewal fee may ~~shall~~ not exceed \$150.

1114 (5) ~~The fee for a certificate of authorization shall not~~  
1115 ~~exceed \$350 and the fee for renewal of the certificate shall not~~  
1116 ~~exceed \$350.~~

1117 ~~(6)~~ The fee for reactivation of an inactive license may  
1118 ~~shall~~ not exceed \$50.

1119 ~~(6)~~ ~~(7)~~ The fee for a provisional license may ~~shall~~ not  
1120 exceed \$400.

1121 ~~(7)~~ ~~(8)~~ The fee for application, examination, and licensure  
1122 for a license by endorsement is ~~shall be~~ as provided in this  
1123 section for licenses in general.

1124 Section 44. Subsection (4) of section 492.113, Florida  
1125 Statutes, is amended to read:

1126 492.113 Disciplinary proceedings.—

1127 (4) The department shall reissue the license of a  
1128 disciplined professional geologist ~~or business~~ upon  
1129 certification by the board that the disciplined person has  
1130 complied with ~~all of~~ the terms and conditions set forth in the  
1131 final order.

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1132 Section 45. Section 492.115, Florida Statutes, is amended  
1133 to read:

1134 492.115 Roster of licensed professional geologists.—A  
1135 roster showing the names and places of business or residence of  
1136 all licensed professional geologists and all properly qualified  
1137 firms, corporations, or partnerships practicing ~~holding~~  
1138 ~~certificates of authorization to practice~~ professional geology  
1139 in the state shall be prepared annually by the department. A  
1140 copy of this roster must be made available to ~~shall be~~  
1141 ~~obtainable by~~ each licensed professional geologist and each  
1142 firm, corporation, or partnership qualified by a professional  
1143 geologist ~~holding a certificate of authorization~~, and copies  
1144 thereof shall be placed on file with the department.

1145 Section 46. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Rob Bradley, Chair  
Committee on Regulated Industries

**Subject:** Committee Agenda Request

**Date:** December 18, 2015

---

I respectfully request that **Senate Bill #1050**, relating to **Regulated Professions and Occupations**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal flourish extending to the right.

---

Senator Jeff Brandes  
Florida Senate, District 22

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/02/2016  
Meeting Date

SB1050

~~SB1050~~  
Bill Number (if applicable)

843146

~~SB1050~~  
Amendment Barcode (if applicable)

Topic Relating to Regulated Professions and Occupations

Name Corinne Mixon

Job Title ~~Lobbyist~~ Governmental Consultant

Address 119 East Park Ave  
Street

Phone 850-222-2591

Tallahassee FL 32301  
City State Zip

Email Corinne@MixonandAssociates.com

Speaking:  For  Against  Information  
Box Code ~~843146~~ 843146

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

Representing Florida Veterinary Medical 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.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/2/2016

Meeting Date

1050

Bill Number (if applicable)

Topic Regulated Professions + Occupations

Amendment Barcode (if applicable)

Name Phil Leary

Job Title Lobbyist

Address 240 S. Arabella Way

Phone 386 - 937 - 7829

St. Johns FL 32259

Email pleary@learygac.com

Speaking:  For  Against  Information

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

Representing Florida Association of Professional Geologists

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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/2/16

Meeting Date

1058

Bill Number (if applicable)

Topic Regulated Professional Occupations

Amendment Barcode (if applicable)

Name JOE APPEGGATE

Job Title Sr. Vice President

Address 3428 Clifden Dr

Phone 850 895 4720

Street

Tallahassee

City

FL

State

32309

Zip

Email Joe.Applegate@aradis.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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/2/14

Meeting Date

SB 1050

Bill Number (if applicable)

Topic FL Dereg.

Amendment Barcode (if applicable)

Name Ari Bargil

Job Title Attorney

Address 999 Brickell Ave., Suite 720  
Street

Phone 954-270-8931

Miami Beach

City

FL

State

33131

Zip

Email abargil@ij.com

Speaking:  For  Against  Information

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

Representing The Institute for Justice

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)

2/2/16

Meeting Date

SB1050

Bill Number (if applicable)

Topic Bill

Amendment Barcode (if applicable)

Name David Mica, Jr.

Job Title Legislative Affairs Director

Address 1940 N. Monroe St.

Phone (850)487-4827

Tallahassee FL 32399

City State Zip

Email david.mica@myfloridalicense.com

Speaking: [X] For [ ] Against [ ] Information

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

Representing DBPR

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] 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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/2/2016

Meeting Date

SB 1050

Bill Number (if applicable)

Topic Occupational Licensing

Amendment Barcode (if applicable)

Name Samuel Staley

Job Title Director, DeVoe L. Moore Ctr., Florida State

Address 150 B. Bellamy Bldg

Phone 850 645 9694

Street

Tallahassee FL

City

State

32306-2220

Zip

Email sstaley@fsu.edu  
sstaley@fsu

Speaking:  For  Against  Information

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

Representing Individual

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/2/16

Meeting Date

1050

Bill Number (if applicable)

Topic Regulated Professions & Occupations

Amendment Barcode (if applicable)

Name Jason Smith

Job Title Cable Splicer

Address 6603 E. Chelsea

Street

Phone 813 626 5136

Tampa FL

City

State

33610

Zip

Email

Speaking: For [ ] Against [x] Information [ ]

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

Representing IBEW local 824

Appearing at request of Chair: Yes [ ] No [x]

Lobbyist registered with Legislature: Yes [ ] No [x]

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.

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2/2/16

Meeting Date

1050

Bill Number (if applicable)

Topic Regulated Professions & Occupations

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title Vice President & General Counsel

Address 227 S. Adams St.

Phone 222-4082

Street

Tallahassee

City

FL

State

32301

Zip

Email samantha@prf.org

Speaking:  For  Against  Information

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

Representing Beauty Industry Council of the Florida Retail Federation

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)











843146

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2016	.	
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	.	
	.	

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The Committee on Regulated Industries (Stargel) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 473 - 494.

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

And the title is amended as follows:

Delete lines 46 - 49

and insert:

on certain business organizations; amending s.  
477.0132, F.S.; excluding



463092

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/03/2016	.	
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	.	
	.	

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The Committee on Regulated Industries (Stargel) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 739 - 742

and insert:

(8) For purposes of disciplinary action under this part, the qualifying agent for a business organization is responsible for the operations and conduct of the business organization. If there is more than one qualifying agent for the business organization, only the qualifying agent or agents directly responsible for the operations or conduct that constitutes a



463092

11 disciplinary violation shall be subject to disciplinary action.  
12 This subsection does not affect the application of s. 558.0035,  
13 or create any additional civil liability for qualifying agents  
14 of a business organization.

15

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

17 And the title is amended as follows:

18 Delete lines 87 - 88

19 and insert:

20 organization is responsible for certain operations and  
21 conduct; providing only the qualifying agent or agents  
22 directly responsible for operations or conduct that  
23 constitutes a disciplinary violation are subject to  
24 disciplinary action; providing that such  
25 responsibility does not create any additional civil  
26 liability for qualifying agents; conforming



287132

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2016	.	
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The Committee on Regulated Industries (Stargel) recommended the following:

1           **Senate Substitute for Amendment (463092) (with title**  
2 **amendment)**

3  
4           Delete lines 739 - 742.

5  
6 ===== T I T L E   A M E N D M E N T =====

7 And the title is amended as follows:

8           Delete lines 86 - 88

9 and insert:

10           conforming



832030

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2016	.	
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	.	
	.	

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The Committee on Regulated Industries (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 1013 - 1144  
and insert:

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

And the title is amended as follows:

Delete lines 116 - 118  
and insert:



832030

11  
12

by the act; providing an effective date.



**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 720

INTRODUCER: Senator Hutson

SUBJECT: Self-storage Facilities

DATE: February 1, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Maida</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Kraemer</u>	<u>Caldwell</u>	<u>RI</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>FP</u>	_____

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**I. Summary:**

SB 1174 amends s. 83.806, F.S., relating to enforcement of liens on personal property in self-storage facilities and self-contained storage units. The bill allows for the advertisement of the sale or other disposition of personal property in a self-storage facility or self-contained storage unit to be posted on an online internet website accessible to the public. The bill deletes the requirement for physical posting in three conspicuous places in the neighborhood of the storage facility or unit, if there is no general circulation newspaper in the area of the storage facility or unit.

The bill provides that if the rental agreement for a storage unit states a limit on the value of the property to be stored, that limit is deemed to be the maximum value of the stored property.

The bill allows for the owners of a storage unit to have a vehicle towed from the storage unit, when the vehicle's title is deemed to have no prior lienholder. The bill provides that the storage unit owner is not liable for the vehicle or any damages to it after the vehicle is removed from the unit by a wrecker, tow truck, or car carrier.

The bill provides for a July 1, 2016, effective date.

**II. Present Situation:**

**Self-storage Facility Act**

Sections 83.801 to 83.809, F.S., constitute the Self-storage Facility Act (act). Nothing in the act may be construed to impair or affect the rights of parties to create additional rights, duties, and

obligations in a rental agreement, and the provisions of the act are in addition to all other rights allowed by law in a creditor-debtor or landlord-tenant relationship.<sup>1</sup>

A self-service storage facility (storage facility) is any real property designed and used for renting or leasing individual storage space to tenants who have access to the space in order to store and remove personal property, but not to use it as a residence.<sup>2</sup> A storage facility is not a warehouse as used in ch. 677, F.S.,<sup>3</sup> and if a storage facility owner issues any warehouse receipt, bill of lading, or other document of title for the stored personal property, the owner and the tenant are subject to the provisions of ch. 677, F.S., and not the provisions of the act.<sup>4</sup>

A self-contained storage unit (unit) is a unit (such as a trailer, box or other shipping container) at least 200 cubic feet in size, which is leased by a tenant primarily for use as storage space and is located at a facility owned or operated by the owner or at a location designated by the tenant.<sup>5</sup> An owner is defined as an owner, operator, lessor, or sublessor of a storage facility or unit, or his agent or any other person authorized by the owner to manage the facility or to receive rent from a tenant pursuant to a rental agreement for a unit.<sup>6</sup>

Section 83.803(4), F. S., defines tenant as a person or his sublessee, successor, or assign entitled pursuant to a rental agreement to the exclusive use of storage space at a storage facility or in a unit, and s. 83.803(5), F.S., defines rental agreement as any agreement or lease which establishes or modifies terms, conditions, rules, or any other provisions concerning the use and occupancy of a storage facility or a unit.

The act addresses liens against the personal property located at a storage facility or in a unit.<sup>7</sup> An owner of a storage facility or unit (and the owner's heirs, executors, administrators, successors, and assigns) has a lien upon all personal property at a storage facility or in a unit, even if that property is not owned by the tenant, for rent, labor charges, or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to the act.

The lien attaches as of the date that the personal property is brought to the storage facility or the date the tenant takes possession of the unit, and the priority of this lien is the same as a landlord's lien pursuant to s. 83.08, F.S.<sup>8</sup> In the event of default, the owner must give notice to persons who

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<sup>1</sup> Section 83.809, F.S.

<sup>2</sup> Section 83.803(1), F.S. A history of public self-storage and the consumer protection provided by public notice is provided by the Public Notice Resource Center, *Public Notice in Self-Storage* (2014) (on file with the Committee on Regulated Industries).

<sup>3</sup> Chapter 677, F.S., codifies article 7 of the Uniform Commercial Code and governs warehouse receipts, bills of lading, and other documents and procedures relating to goods, storage, and contracts to deliver them.

<sup>4</sup> *Id.*

<sup>5</sup> Section 83.803(2), F.S.

<sup>6</sup> Section 83.803(3), F.S.

<sup>7</sup> See s. 83.805, F.S.

<sup>8</sup> The lien rights provided by s. 83.08(2), F.S., are in favor of owners to whom rent may be due, upon the property found upon or off the leased or rented premises, and are superior to any lien acquired subsequent to the bringing of the property onto the leased premises.

have properly documented security interests against the tenant (known as perfected interests against a debtor under the Uniform Commercial Code set forth in chs. 670 to 680, F.S.)<sup>9</sup>

When a tenant does not timely pay rent, the owner may deny access (without any notice) to the property located in the storage facility or unit, beginning five days after the due date.<sup>10</sup> The owner may then pursue legal action, or may proceed without using the courts, if doing so will not create a breach of the peace.<sup>11</sup>

Section 83.806, F.S., addresses satisfaction of an owner's lien against a tenant lien. A tenant is notified in writing either in person, by electronic mail, or by first-class mail with a certificate of mailing to the tenant's last known address<sup>12</sup> and a copy conspicuously posted at the storage facility or on the unit. If no response, return receipt or delivery confirmation is received from the same last known electronic address of the tenant, notice of the sale must be sent by the owner to the tenant by first-class mail with a certificate of mailing to the tenant's last known address, before proceeding with the sale.<sup>13</sup>

As required by s. 83.806(2), F.S., the notice of the sale shall include:

- An itemized statement of the claim indicating the due date and the amount due;
- The same description, or a reasonably similar description, of the personal property as stated in the rental agreement;
- A demand for payment within a specified time not less than 14 days after delivery of the notice (notice period);
- A conspicuous statement that, unless the claim is paid within the notice period, the personal property will be advertised for sale or other disposition (sale) and will be sold or otherwise disposed of at a specified time and place; and
- The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.

A notice of sale is presumed delivered when deposited with the United States Postal Service, properly addressed and with prepaid postage.<sup>14</sup> After the expiration of the notice period, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the storage facility or unit is located. A single advertisement and a single sale may be used to dispose of property, even the property is owned by more than one person.<sup>15</sup>

Section 83.806(4), F.S., requires that the advertisement of the sale include:

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<sup>9</sup> See *supra* note 5 and s. 671.101, F.S.

<sup>10</sup> Section 83.8055, F.S.

<sup>11</sup> *Id.* Section 877.03, F.S., states that a person who commits acts that corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a second degree misdemeanor, which is punishable by up to 60 days in jail and a fine not exceeding \$500.

<sup>12</sup> Section 83.803(6), F.S., provides that the last known address is the street address or post office box address provided by the tenant in the latest rental agreement or in a subsequent written change-of-address notice provided by hand delivery, first-class mail, or e-mail.

<sup>13</sup> Section 83.806(1), F.S.

<sup>14</sup> Section 83.806(3), F.S.

<sup>15</sup> Section 83.806(4), F.S.

- A brief and general description of what is believed to constitute the personal property contained in the storage unit, pursuant to the rental agreement;
- The address of the storage facility or unit and the tenant's name; and
- The time, place, and manner of the sale, which may not be sooner than 15 days after the first publication.

If there is no newspaper of general circulation in the area where the facility or unit is located, the advertisement of the sale must be posted at least 10 days before the date of the sale, in at least three conspicuous places in the neighborhood where the facility or unit is located.<sup>16</sup>

Section 83.806(5), F.S., states that a sale must be properly noticed and advertised, and conducted in a commercially reasonable manner.<sup>17</sup> Before any sale, the tenant may redeem the property by paying the amount due and the reasonable expenses incurred by the owner in complying with the enforcement procedures required by s. 83.806, F.S. (the compliance expenses).<sup>18</sup> Upon receipt of payment, the owner must return the property to the tenant. If the tenant fails to redeem the property or satisfy the lien and the compliance expenses, the tenant is deemed to have unjustifiably abandoned the storage facility or storage unit, and the owner may resume possession of the premises.<sup>19</sup>

Section 83.806(7), F.S., provides that a good faith purchaser of property sold to satisfy a lien for amounts due for rental of a storage facility or unit and for compliance expenses, takes the property free of any claims, except those interests provided for in s. 83.808, F.S., despite any noncompliance by the owner with the enforcement procedures.<sup>20</sup>

After a sale, if the owner's lien has priority over all other liens in the property, s. 83.806(8), F.S., states:

- The owner may satisfy the lien from the sale proceeds;
- The lien rights of secured lienholders are automatically transferred to the remaining sale proceeds of the sale;
- Any balance must be held by the owner for delivery to the tenant upon demand;
- A notice of any balance must be delivered by the owner to the tenant either in person or by first-class mail with a certificate of mailing to the tenant's last known address; and
- If the tenant does not claim the balance of the proceeds within 2 years after the sale date, the proceeds are deemed abandoned, and the owner has no further obligation for payment of the balance.

However, if the owner's lien does not have priority over all other liens, s. 83.806(8), F.S., states:

- The sale proceeds must be held for the benefit of the holders of all superior liens;

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<sup>16</sup> *Id.*

<sup>17</sup> Section 679.627(2), F.S., states that a disposition of collateral is made in a commercially reasonable manner if the disposition is made in the usual manner and at the current price in any recognized market at the time of disposition, or otherwise in conformity with reasonable commercial practices among dealers in the type of property.

<sup>18</sup> Section 83.806(6), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 83.808, F.S., states that nothing in the act affects liens created by special contract or agreement, or any other lien arising at common law, in equity, or by any state statute or any other lien, other than the lien for charges established in s. 83.805, F.S.

- A notice of the amount of sale proceeds must be delivered by the owner to the tenant or to the secured lienholders either in person or by first-class mail with a certificate of mailing to their last known addresses; and
- If the tenant or the secured lienholders do not claim the sale proceeds within 2 years after the sale date, the proceeds are deemed abandoned, and the owner has no further obligation for payment of the proceeds.

### **Legal and Official Advertisements in Newspapers and on Websites**

The requirements for legal notices containing information of a public character or of interest or value to the residents or owners of property, or of interest or value to the general public, are provided in s. 50.011, F.S. When a legal advertisement in a newspaper is directed for any purpose, the intent and meaning of such legislation is that there be publication in a newspaper (qualified newspaper), which must be:

- Printed and published at least once a week, with at least 25 percent of its words in the English language;
- Entered as periodicals matter at a post office in the county where published;
- For sale to the public generally; and
- Available to the public generally.<sup>21</sup>

When any law directs advertisements to be made and there is no qualified newspaper published in the applicable county, the alternative method is posting three copies of the advertisement in three different places in the county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a qualified newspaper is published.<sup>22</sup>

Section 50.0211(2), F.S., provides that effective July 1, 2013, each legal notice must be placed on the newspaper's website on the same day the notice appears in the newspaper, at no additional charge. There must be a link to legal notices on the front page of that website for access to the legal notices without charge. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the website should optimize its online visibility in keeping with the print requirements. The web pages that contain legal notices shall present the legal notices as the dominant subject matter of those pages, and the website shall contain a search function to facilitate searching the legal notices.

Section 50.0211(3), F.S., requires placement of published legal notices by the qualified newspaper on the website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at [www.floridapublicnotices.com](http://www.floridapublicnotices.com). Upon request and without charge, newspapers that publish legal notices shall provide e-mail notification of new legal notices when they are printed in the newspaper and added to the newspaper's website. Notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website.<sup>23</sup> An error in the notice placed on the

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<sup>21</sup> Section 50.011, F.S.

<sup>22</sup> Section 50.021, F.S.

<sup>23</sup> Section 50.0211(4), F.S.

newspaper or statewide website shall be considered a harmless error, and proper legal notice requirements shall be considered met if the notice published in the newspaper is correct.<sup>24</sup>

### III. Effect of Proposed Changes:

SB 720 substantially revises the requirements for advertisement and sale of personal property of delinquent tenants by owners of a self-storage facility (owners). Owners may advertise sales in a local newspaper, or may advertise sales in any commercially reasonable manner.<sup>25</sup> The advertisement is deemed commercially reasonable if at least three bidders unrelated to the owner and who have no common financial interest with the owner or any other bidder, attend the sale in person or register to bid at an online sale.<sup>26</sup>

Sales may also be conducted on a public website that regularly conducts personal property auctions, and licensure is not required to post property for sale online. The bill eliminates the requirement that owners post notices in three conspicuous places in the neighborhood of the self-storage facility when there is no newspaper of general circulation published in the area.

The bill provides that when the rental agreement with a tenant limits the value of the property that may be stored in the rented storage space, the stated limit is considered to be the maximum value of the stored property. This provision has the effect of limiting liability of owners for damages to stored property.<sup>27</sup> Should a court in Florida interpret a rental agreement as one of adhesion,<sup>28</sup> the result may be unfavorable for owners.<sup>29</sup>

The bill creates two methods for owners to remove vehicles and watercraft when rent and other charges are past due for 60 days. If a vehicle or watercraft is towed away, the self-storage facility or owner no longer has liability for it or for damages to it. Alternatively, if a sale of the vehicle or watercraft is desired to recover unpaid rent, the vehicle or watercraft may be sold under certain conditions, including research with the Florida Department of Highway Safety and Motor Vehicles (department) to identify any lienholders, and written notices by “verified mail”<sup>30</sup> to lienholders and the owners of the property that the property may be sold in any commercially reasonable manner, including public auction.

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<sup>24</sup> Section 50.0211(5), F.S.

<sup>25</sup> Section 671.101, F.S., provides that chs. 670-680, F.S., may be cited as Florida’s “Uniform Commercial Code.”

<sup>26</sup> The Uniform Commercial Code requires a secured creditor to dispose of a debtor’s property in a commercially reasonable manner. However, the term “commercially reasonable” is not defined in the code. See ss. 679.607-679.615, F.S.; see also Gary D. Spivey, *Uniform Commercial Code: Burden of Proof as to Commercially Reasonable Disposition of Collateral*, 59 A.L.R.3d 369, at s. 2[a] (1974).

<sup>27</sup> See *Allied Van Lines, Inc., v. Bratton*, 351 So. 2d 344 (Fla. 1977) (a contract that limited the carrier’s liability to the shipper to \$1.25 per pound was valid).

<sup>28</sup> Adhesion contracts are standardized contract forms offered to consumers of goods and services on a “take it or leave it” basis with no realistic opportunity for the consumer to bargain. See, e.g., *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 574 (Fla. 1st DCA 1999).

<sup>29</sup> *Id.* Whether a contract is one of adhesion is a factor examined by courts in determining a contract’s unconscionability. If a contract is unconscionable, it is unenforceable. See also *Gainesville Health Care Center, Inc. v. Weston*, 857 So. 2d 278 (Fla. 1st DCA 2003).

<sup>30</sup> The term “verified” mail is used in the bill on line 86. It appears that this is a reference to verification of an electronic mail address, as a substitute for United States Postal Service mail, such as “certified mail, return receipt requested.”

The bill provides a July 1, 2016, effective date.

**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 creation of other methods for self-storage facilities and owners to pursue the sale of personal property, in addition to advertisements in newspapers of general circulation, may impact the revenues of newspapers and improve revenues of those who operate online sales or personal property auctions. If advertising costs for the sale of property are reduced, or proceeds from the sale of property are increased, both self-storage facilities and the affected tenant may benefit.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The term “tower” is used in the bill on line 77. An amendment should be considered to reference “wrecker,” which is a defined term under s. 320.01(39), F.S.<sup>31</sup>

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<sup>31</sup> Chapter 320, F.S., addresses motor vehicle licenses; s. 320.01(39), F.S., provides that “wrecker” means “any motor vehicle that is used to tow, carry, or otherwise transport motor vehicles and that is equipped for that purpose with a boom, winch, car carrier, or other similar equipment.”

The term “verified” mail is used in the bill on line 86. It appears that this is a reference to verification of an electronic mail address, as a substitute for United States Postal Service mail, such as “certified mail, return receipt requested.”

**VIII. Statutes Affected:**

This bill substantially amends section 83.806 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By Senator Hutson

6-00814A-16

2016720\_\_

1                                   A bill to be entitled  
2       An act relating to self-storage facilities; amending  
3       s. 83.806, F.S.; providing that advertisement of a  
4       sale or disposition of property may be in any  
5       commercially reasonable manner; specifying when  
6       advertising may be considered to have been conducted  
7       in a commercially reasonable manner; defining the term  
8       "independent bidder"; providing that a lien sale may  
9       be conducted on certain websites; providing that a  
10      self-storage facility owner is not required to have a  
11      license to post property for online sale; deleting a  
12      required alternative form of advertisement; providing  
13      limits for the maximum valuation of property under  
14      certain circumstances; providing options for the  
15      disposition of motor vehicles or watercraft claimed to  
16      be subject to a lien; requiring specified notice to  
17      lienholders and owners of motor vehicles or watercraft  
18      subject to a lien; providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22       Section 1. Subsection (4) of section 83.806, Florida  
23       Statutes, is amended, and subsections (9) and (10) are added to  
24       that section, to read:

25       83.806 Enforcement of lien.—An owner's lien as provided in  
26       s. 83.805 may be satisfied as follows:

27       (4) After the expiration of the time given in the notice,  
28       an advertisement of the sale or other disposition shall be  
29       published once a week for 2 consecutive weeks in a newspaper of

6-00814A-16

2016720\_\_

30 general circulation in the area where the self-service storage  
31 facility or self-contained storage unit is located or advertised  
32 in any other commercially reasonable manner. As used in this  
33 subsection, an advertisement is considered to have been  
34 advertised in a "commercially reasonable" manner if at least  
35 three independent bidders attend the sale at the time and place  
36 advertised or register to bid at an online sale. As used in this  
37 subsection, the term "independent bidder" means a bidder who is  
38 not related to and who has no controlling interest in, or common  
39 pecuniary interest with, the owner or any other bidder.

40 (a) A lien sale may be conducted on a public website that  
41 customarily conducts personal property auctions. The facility or  
42 unit owner is not required to be licensed to post property  
43 online for sale pursuant to this subsection. Inasmuch as any  
44 sale may involve property of more than one tenant, a single  
45 advertisement may be used to dispose of property at any one  
46 sale.

47 (b)-(a) The advertisement shall include:

48 1. A brief and general description of what is believed to  
49 constitute the personal property contained in the storage unit,  
50 as provided in paragraph (2) (b).

51 2. The address of the self-service storage facility or the  
52 address where the self-contained storage unit is located and the  
53 name of the tenant.

54 3. The time, place, and manner of the sale or other  
55 disposition. The sale or other disposition shall take place not  
56 sooner than 15 days after the first publication or  
57 advertisement.

58 ~~(b) If there is no newspaper of general circulation in the~~

6-00814A-16

2016720\_\_

59 ~~area where the self-service storage facility or self-contained~~  
60 ~~storage unit is located, the advertisement shall be posted at~~  
61 ~~least 10 days before the date of the sale or other disposition~~  
62 ~~in not fewer than three conspicuous places in the neighborhood~~  
63 ~~where the self-service storage facility or self-contained~~  
64 ~~storage unit is located.~~

65 (9) If the rental agreement contains a limit on the value  
66 of property stored in the tenant's storage space, the limit is  
67 deemed to be the maximum value of the property stored in that  
68 space.

69 (10) If a lien is claimed on property that is a motor  
70 vehicle or a watercraft and rent and other charges related to  
71 the property remain unpaid or unsatisfied for 60 days after the  
72 maturity of the obligation to pay the rent and other charges,  
73 the facility or unit owner may do one of the following:

74 (a) The facility or unit owner may have the property towed.  
75 If a motor vehicle or watercraft is towed, the facility or unit  
76 owner is not liable for the motor vehicle or watercraft or any  
77 damages to the motor vehicle or watercraft once a tower takes  
78 possession of the property.

79 (b) The facility or unit owner may contact the Florida  
80 Department of Highway Safety and Motor Vehicles to determine the  
81 existence and identity of any lienholder and the name and  
82 address of the owner of the motor vehicle or watercraft. Within  
83 10 days after receipt of such information concerning a  
84 lienholder and the owner of such motor vehicle or watercraft,  
85 the facility or unit owner must send written notice to the  
86 lienholder and to the owner by verified mail, stating that:

87 1. Such motor vehicle or watercraft is being held by the

6-00814A-16

2016720\_\_

88 facility or unit owner;

89 2. A lien has attached;

90 3. Payment must be made within 30 days after notification  
91 to satisfy the lien and take possession of the motor vehicle or  
92 watercraft; and

93 4. The facility or unit owner may sell the motor vehicle or  
94 watercraft in any commercially reasonable manner, including by  
95 public auction, if the lien is not satisfied.

96 (c) If an owner or a lienholder who receives notice under  
97 paragraph (b) does not satisfy the lien, the facility or unit  
98 owner may sell the motor vehicle or watercraft in any  
99 commercially reasonable manner, including by public auction.

100 Section 2. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Rob Bradley, Chair  
Committee on Regulated Industries

**Subject:** Committee Agenda Request

**Date:** January 26, 2016

---

I respectfully request that **Senate Bill #720**, relating to Self Storage Associations, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink that reads "Travis Hutson".

---

Senator Travis Hutson  
Florida Senate, District 6

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/2/16

Meeting Date

720

Bill Number (if applicable)

719718

Amendment Barcode (if applicable)

Topic Self Storage Facilities

Name Joseph Salzwerg

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

Address 301 S. Bronough Street, #500

Street

TLH

City

FL

State

32301

Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Self Storage 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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

720  
Bill Number (if applicable)

712718  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name JEFF KOTTKAMP

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

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email JEFF.KOTTKAMP@gmail.com

Speaking:  For  Against  Information

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

Representing FLORIDA RIGHTS TO KNOW

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.**

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

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

2/2/16

*Meeting Date*

SB 720

*Bill Number (if applicable)*

Topic Self-Storage Facilities

*Amendment Barcode (if applicable)*

Name Brewster Bevis

Job Title Senior VP

Address 516 N. Adams St

Phone 850-224-7173

*Street*

Tallahassee

FL

32312

Email bbevis@aif.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Associated Industries of Florida

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)

02/02/2016

720

*Meeting Date*

*Bill Number (if applicable)*

Topic Sale of property in storage units - public notices

*Amendment Barcode (if applicable)*

Name Dean Ridings

Job Title President & CEO

Address 336 E. College Ave., Suite 201

Phone 850-212-8895

*Street*

Tallahassee

FL

32301

Email dridings@flpress.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Press 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)

2.2.16

Meeting Date

720

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name WAYNE MAANEY

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

Address 32 Via Del Corso

Phone 850-933-7001

Street

PALM BEACH GARDENS FL 33418

City

State

Zip

Email FLOBBY15T@ADL.COM

Speaking:  For  Against  Information

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

*Amendment + B.11*

Representing BAILEY PUBLISHING + AMERICAN LAWYER MEDIA

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)



947448

LEGISLATIVE ACTION

Senate	.	House
Comm: TP	.	
02/02/2016	.	
	.	
	.	
	.	

---

The Committee on Regulated Industries (Stargel) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 32 - 99  
and insert:  
for 2 consecutive weeks on an Internet website accessible to the public.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to be licensed to post property online for sale pursuant to this subsection. Inasmuch as any



947448

11 sale may involve property of more than one tenant, a single  
12 advertisement may be used to dispose of property at any one  
13 sale.

14 (b)~~(a)~~ The advertisement shall include:

15 1. A brief and general description of what is believed to  
16 constitute the personal property contained in the storage unit,  
17 as provided in paragraph (2) (b).

18 2. The address of the self-service storage facility or the  
19 address where the self-contained storage unit is located and the  
20 name of the tenant.

21 3. The time, place, and manner of the sale or other  
22 disposition. The sale or other disposition shall take place not  
23 sooner than 15 days after the first publication or  
24 advertisement.

25 ~~(b) If there is no newspaper of general circulation in the~~  
26 ~~area where the self-service storage facility or self-contained~~  
27 ~~storage unit is located, the advertisement shall be posted at~~  
28 ~~least 10 days before the date of the sale or other disposition~~  
29 ~~in not fewer than three conspicuous places in the neighborhood~~  
30 ~~where the self-service storage facility or self-contained~~  
31 ~~storage unit is located.~~

32 (9) If the rental agreement contains a limit on the value  
33 of property stored in the tenant's storage space, the limit is  
34 deemed to be the maximum value of the property stored in that  
35 space.

36 (10) If a lien is claimed on property that is a motor  
37 vehicle or a watercraft and rent and other charges related to  
38 the property remain unpaid or unsatisfied for 60 days after the  
39 maturity of the obligation to pay the rent and other charges,



947448

40 the facility or unit owner may do one of the following:

41 (a) The facility or unit owner may have the property towed.

42 If a motor vehicle or watercraft is towed, the facility or unit  
43 owner is not liable for the motor vehicle or watercraft or any  
44 damages to the motor vehicle or watercraft once a tower takes  
45 possession of the property.

46 (b) The facility or unit owner may sell the motor vehicle  
47 or watercraft by public auction if an owner or lienholder who  
48 receives notice pursuant to this paragraph does not satisfy the  
49 lien. Prior to such a sale, the facility or unit owner must  
50 contact the Department of Highway Safety and Motor Vehicles to  
51 determine the existence and identity of any lienholder and the  
52 name and address of the owner of the motor vehicle or  
53 watercraft. Within 10 days after receipt of such information  
54 concerning a lienholder and the owner of such motor vehicle or  
55 watercraft, the facility or unit owner must send written notice  
56 to the lienholder and to the owner by first-class mail stating  
57 that:

58 1. Such motor vehicle or watercraft is being held by the  
59 facility or unit owner;

60 2. A lien has attached;

61 3. Payment must be made within 30 days after notification  
62 to satisfy the lien and take possession of the motor vehicle or  
63 watercraft; and

64 4. The facility or unit owner may sell the motor vehicle or  
65 watercraft by public auction, if the lien is not satisfied.

66

67

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



947448

69 And the title is amended as follows:

70 Delete lines 4 - 8

71 and insert:

72 sale or disposition of property may be conducted

73 through certain websites; providing that a lien sale

74 may



712718

LEGISLATIVE ACTION

Senate	.	House
Comm: TP	.	
02/02/2016	.	
	.	
	.	
	.	

---

The Committee on Regulated Industries (Stargel) recommended the following:

1           **Senate Substitute for Amendment (947448) (with title**  
2 **amendment)**

3  
4           Delete everything after the enacting clause  
5 and insert:

6           Section 1. Subsection (4) of section 83.806, Florida  
7 Statutes, is amended, and subsections (9) and (10) are added to  
8 that section, to read:

9           83.806 Enforcement of lien.—An owner's lien as provided in  
10 s. 83.805 may be satisfied as follows:



712718

11           (4) After the expiration of the time given in the notice,  
12 an advertisement of the sale or other disposition shall be  
13 published once a week for 2 consecutive weeks in a newspaper of  
14 general circulation in the area where the self-service storage  
15 facility or self-contained storage unit is located or advertised  
16 for 14 calendar days on an Internet website to be developed and  
17 maintained by the Chief Financial Officer. The obligation to  
18 provide notice rests solely with the self-storage unit owner,  
19 and the Chief Financial Officer is not liable for technical  
20 failures or any other cause that may interfere with or interrupt  
21 the 14 day notice period, or for the contents of, or any defects  
22 in, the notice. The Chief Financial Officer shall charge the  
23 owner a fee to cover the costs associated with building,  
24 maintaining, and operating the website, which shall be deposited  
25 into the Administrative Trust Fund. The Department of Financial  
26 Services may adopt rules to provide for procedures for the  
27 maintenance and operation of the site and the calculation and  
28 remittance of the fee.

29           (a) A lien sale may be conducted on a public website that  
30 customarily conducts personal property auctions. The facility or  
31 unit owner is not required to be licensed to post property  
32 online for sale pursuant to this subsection. Inasmuch as any  
33 sale may involve property of more than one tenant, a single  
34 advertisement may be used to dispose of property at any one  
35 sale.

36           (b) ~~(a)~~ The advertisement shall include:

37           1. A brief and general description of what is believed to  
38 constitute the personal property contained in the storage unit,  
39 as provided in paragraph (2) (b).





712718

40           2. The address of the self-service storage facility or the  
41 address where the self-contained storage unit is located and the  
42 name of the tenant.

43           3. The time, place, and manner of the sale or other  
44 disposition. The sale or other disposition shall take place not  
45 sooner than 15 days after the first publication or  
46 advertisement.

47           ~~(b) If there is no newspaper of general circulation in the~~  
48 ~~area where the self-service storage facility or self-contained~~  
49 ~~storage unit is located, the advertisement shall be posted at~~  
50 ~~least 10 days before the date of the sale or other disposition~~  
51 ~~in not fewer than three conspicuous places in the neighborhood~~  
52 ~~where the self-service storage facility or self-contained~~  
53 ~~storage unit is located.~~

54           (9) If the rental agreement contains a limit on the value  
55 of property stored in the tenant's storage space, the limit is  
56 deemed to be the maximum value of the property stored in that  
57 space.

58           (10) If a lien is claimed on property that is a motor  
59 vehicle or a watercraft and rent and other charges related to  
60 the property remain unpaid or unsatisfied for 60 days after the  
61 maturity of the obligation to pay the rent and other charges,  
62 the facility or unit owner may do one of the following:

63           (a) The facility or unit owner may have the property towed.  
64 If a motor vehicle or watercraft is towed, the facility or unit  
65 owner is not liable for the motor vehicle or watercraft or any  
66 damages to the motor vehicle or watercraft once a tower takes  
67 possession of the property.

68           (b) The facility or unit owner may sell the motor vehicle



712718

69 or watercraft by public auction if an owner or lienholder who  
70 receives notice pursuant to this paragraph does not satisfy the  
71 lien. Before such a sale, the facility or unit owner must  
72 contact the Department of Highway Safety and Motor Vehicles to  
73 determine the existence and identity of any lienholder and the  
74 name and address of the owner of the motor vehicle or  
75 watercraft. Within 10 days after receipt of such information  
76 concerning a lienholder and the owner of such motor vehicle or  
77 watercraft, the facility or unit owner must send written notice  
78 to the lienholder and to the owner by first-class mail stating  
79 that:

- 80 1. Such motor vehicle or watercraft is being held by the  
81 facility or unit owner;  
82 2. A lien has attached;  
83 3. Payment must be made within 30 days after notification  
84 to satisfy the lien and take possession of the motor vehicle or  
85 watercraft; and  
86 4. The facility or unit owner may sell the motor vehicle or  
87 watercraft by public auction, if the lien is not satisfied.

88 Section 2. This act shall take effect July 1, 2016.

89  
90 ===== T I T L E A M E N D M E N T =====

91 And the title is amended as follows:

92 Delete everything before the enacting clause  
93 and insert:

94 A bill to be entitled  
95 An act relating to self-storage facilities; amending  
96 s. 83.806, F.S.; providing that advertisement of a  
97 sale or disposition of property may be conducted on a



712718

98 certain website; providing that the obligation to  
99 provide notice rests on the self-storage unit owner;  
100 providing that the Chief Financial Officer is not  
101 liable for certain issues relating to notices or the  
102 website; requiring the Chief Financial Officer to  
103 charge certain fees; authorizing the Department of  
104 Financial Services to adopt rules; providing that a  
105 lien sale may be conducted on certain websites;  
106 providing that a self-storage facility owner is not  
107 required to have a license to post property for online  
108 sale; deleting a required alternative form of  
109 advertisement; providing limits for the maximum  
110 valuation of property under certain circumstances;  
111 providing options for the disposition of motor  
112 vehicles or watercraft claimed to be subject to a  
113 lien; requiring specified notice to lienholders and  
114 owners of motor vehicles or watercraft subject to a  
115 lien; providing an effective date.

**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.)

---

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

---

BILL: SB 392

INTRODUCER: Senator Margolis

SUBJECT: Alcoholic Beverages

DATE: February 2, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Caldwell	RI	<b>Favorable</b>
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

---

**I. Summary:**

SB 392 prohibits the sale, purchase, use, or possession of powdered alcohol, defined in the bill as alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

The bill prohibits licensed alcoholic beverage vendors from selling powdered alcohol.

The bill provides that a person who violates the prohibition on selling or offering to sell powdered alcohol commits a first degree misdemeanor.

A person who purchases, uses, offers for use, or possess powdered alcohol commits a noncriminal violation, punishable by a fine of \$250.

The bill provides that the prohibition on powdered alcohol does not apply to powdered alcohol used for research by healthcare providers, state institutions, universities and colleges, and pharmaceutical or biotechnology companies. The prohibition also does not apply to the possession of powdered alcohol solely for the purpose of transportation through Florida by or on behalf of a licensed manufacturer or a common carrier.

The bill provides an effective date of July 1, 2016.

## II. Present Situation:

### Florida Beverage Law

Alcoholic beverages are regulated by the Beverage Law,<sup>1</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces the Beverage Law.<sup>3</sup>

Section 561.01(4)(a), F.S., defines the term “alcoholic beverages” to mean:

...distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

(b) The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though said remainder ingredients were distilled water.

Section 561.01(5), F.S., defines the terms “intoxicating beverage” and “intoxicating liquor” to “mean only those alcoholic beverages containing more than 4.007 percent of alcohol by volume.”

Chapter 565, F.S., provides for the regulation of liquor. Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean:

...that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Section 500.04(2), F.S., prohibits the adulteration or misbranding of any food.

Section 500.10(3), F.S., provides that food may be deemed adulterated if it is:

...a confectionary that bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 0.4 percent, harmless natural gum, and pectin; however, this subsection shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances; to any confectionery by reason of its containing less than 0.5 percent by volume of alcohol derived solely from the use of flavoring extracts; or to any candy by reason of its containing more than 0.5 percent but less than 5 percent by volume of alcohol derived from any source, if such candy:

(a) Is not sold to persons under 21 years of age;

---

<sup>1</sup> The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.

<sup>2</sup> *See* s. 561.14, F.S.

<sup>3</sup> Section 561.02, F.S.

- (b) Is labeled with the following statement written in conspicuous print on the principal display panel of the package, or if sold in individual units, in a conspicuous manner adjacent to the product: “This product may not be sold to anyone under 21 years of age”;
- (c) Is not sold in a form containing liquid alcohol so that it constitutes an alcoholic beverage under the Beverage Law; and
- (d) Is distributed directly to Florida consumers only from permanent facilities owned or controlled by the product's manufacturer, or from a vendor licensed pursuant to chapter 565, or from a vendor approved by the Department of Business and Professional Regulation consistent with rules adopted by such department establishing standards for such vendors.

### **The Alcohol and Tobacco Tax and Trade Bureau**

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is a bureau under the U.S. Department of Treasury. The TTB is responsible for assuring that alcohol and tobacco industry operators meet permit requirements; that alcohol beverage products comply with federal production, labeling, and marketing requirements; and for enforcing the tax code to ensure proper federal tax payment on alcohol, tobacco, firearms, and ammunition products. The TTB carries out these responsibilities by developing regulations, analyzing products, and ensuring tax and trade compliance with the Federal Alcohol Administration Act and the Internal Revenue Code. The TTB approved labels for several varieties of the powdered alcohol product “Palcohol” on March 10, 2015.<sup>4</sup>

### **Powdered Alcohol**

Powdered alcohol is alcohol that has been molecularly encapsulated in a starch or sugar. The product which, when combined with a liquid, produces an alcoholic beverage. A U.S. patent for the process was registered as early as 1972.<sup>5</sup> The percentage of alcohol by volume in a powdered alcohol drink may be as high as 60 percent.<sup>6</sup>

It is not clear under the Beverage Law whether powdered alcohol may be considered an alcoholic beverage. According to the Department of Business and Professional Regulation, the definition of liquor in s. 565.01, F.S., would include powdered distilled spirits.<sup>7</sup> The TTB recognizes that powdered alcohol intended for beverage use falls within the jurisdiction of both the federal government and state governments.

---

<sup>4</sup> Alcohol and Tobacco Tax and Trade Bureau Public COLA Registry, available at: <https://www.ttbonline.gov/colasonline/publicSearchColasBasic.do> (last visited March 25, 2015). The label approvals may be found at the TTB’s COLA Registry with the search term “Palcohol” for the brand name and “DSP-AZ-20002” for the permit number.

<sup>5</sup> General Foods Corporation, *Preparation of an Alcohol Containing Powder* (March 31, 1972) available at: <http://www.google.com/patents/US3795747> (last visited January 27, 2016).

<sup>6</sup> See Greenemeier, Larry, *What Is the Big Deal about Powdered Alcohol?*, Scientific American, April 25, 2014. Available at: <http://www.scientificamerican.com/article/what-is-the-big-deal-about-powdered-alcohol/> (last visited January 27, 2016).

<sup>7</sup> 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 392, (October 30, 2015) (on file with the Senate Regulated Industries Committee).

Twenty seven states have banned the sale of powdered alcohol.<sup>8</sup> The states of Colorado, Delaware, and New Mexico define powdered alcohol as an alcoholic beverage and regulate it accordingly.<sup>9</sup>

### III. Effect of Proposed Changes:

The bill creates s. 562.63, F.S., to prohibit the sale, offering for sale, purchase, use, offering for use, or possession of powdered alcohol.

The bill defines the term “powdered alcohol” to mean alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

The bill prohibits alcoholic beverage vendors licensed under s. 565.02(1)(a)-(f), F.S.,<sup>10</sup> from selling or offering for sale powdered alcohol.

The bill provides that a person who violates the prohibition in this section by selling or offering to sell powdered alcohol commits a misdemeanor of the first degree, which is punishable by a term of imprisonment not to exceed 1 year or a fine not to exceed \$1,000.

The bill provides that a person who violates the prohibition in this section by purchasing, using, offering for use, or possessing powdered alcohol commits a noncriminal violation, punishable by a fine of \$250.

The bill provides an exception for the use of powdered alcohol for research purposes by health care providers that primarily conduct scientific research, state institutions, state universities, private colleges and universities, and pharmaceutical or biotechnology companies.

The bill provides that the prohibition on powdered alcohol does not apply to the possession of powdered alcohol solely for the purpose of transportation through Florida by a licensed manufacturer or a common carrier on behalf of a licensed manufacturer.

The bill provides an effective date of July 1, 2015.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

---

<sup>8</sup> See Morton, Heather, *Powdered Alcohol 2015 Legislation*, National Conference of State Legislatures (March 11, 2015) at <http://www.ncsl.org/research/financial-services-and-commerce/powdered-alcohol-2015-legislation/ct/df8216d7b7de6938c301e601e592f776eb0045dd9244348e1143cf5a1e963a3ae43cfdc60de6aeb2bc5403695afb7fbd8f4528943d913bb079480573998f6cb7.aspx> (last visited January 27, 2015).

<sup>9</sup> *Id.*

<sup>10</sup> Section 565.02(1)(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine and distilled spirits, regardless of alcoholic content.

**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:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 562.63 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.



By Senator Margolis

35-00497A-16

2016392\_\_

1                   A bill to be entitled  
2           An act relating to alcoholic beverages; creating s.  
3           562.63, F.S.; defining the term "powdered alcohol";  
4           prohibiting the sale, offer for sale, purchase, use,  
5           offer for use, or possession of powdered alcohol;  
6           providing penalties; providing an exemption for the  
7           use of powdered alcohol by specified entities for  
8           research purposes; providing an exemption for the  
9           possession of powdered alcohol solely for the purpose  
10          of transportation through this state by specified  
11          entities; providing an effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15           Section 1. Section 562.63, Florida Statutes, is created to  
16          read:

17           562.63 Powdered alcohol; prohibited sale, offer for sale,  
18          purchase, use, offer for use, or possession.—

19           (1) As used in this section, the term "powdered alcohol"  
20          means alcohol prepared in a powdered form for either direct use  
21          or consumption after the powder is combined with a liquid.

22           (2) A person may not sell, offer for sale, purchase, use,  
23          offer for use, or possess powdered alcohol.

24           (3) A vendor licensed under s. 565.02(1)(a)-(f) may not  
25          sell or offer for sale powdered alcohol.

26           (4) (a) A person who violates this section by selling or  
27          offering for sale powdered alcohol commits a misdemeanor of the  
28          first degree, punishable as provided in s. 775.082 or s.  
29          775.083.

35-00497A-16

2016392\_\_

30       (b) A person who violates this section by purchasing,  
31 using, offering for use, or possessing powdered alcohol commits  
32 a noncriminal violation, punishable by a fine of \$250.

33       (5) This section does not apply to the use of powdered  
34 alcohol for research purposes by a:

35       (a) Health care provider that operates primarily for the  
36 purpose of conducting scientific research;

37       (b) State institution;

38       (c) State university or private college or university; or

39       (d) Pharmaceutical or biotechnology company.

40       (6) This section does not apply to the possession of  
41 powdered alcohol solely for the purpose of transportation  
42 through this state by a licensed manufacturer or a common  
43 carrier on behalf of a licensed manufacturer.

44       Section 2. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Regulated Industries, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on General Government  
Banking and Insurance  
Finance and Tax  
Fiscal Policy

### SENATOR GWEN MARGOLIS

35th District

December 30, 2015

Chairman Rob Bradley  
Committee on Regulated Industries  
330 Knott Building  
404 S. Monroe Street  
Tallahassee, Florida 32399-1100

Dear Chair Bradley,

I respectfully request that SB 392, Alcoholic Beverages be placed on the next available committee agenda. This bill would join 27 other states in banning the retail sale of Powdered Alcohol. This bill passed this committee and the floor of the Senate last year where it died in messages as the legislative session ended early.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gwen Margolis".

#### REPLY TO:

- 3050 Biscayne Boulevard, Suite 600, Miami, Florida 33137 (305) 571-5777
- 414 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-2-16

Meeting Date

Topic ALCOHOLIC BEVERAGES

Bill Number 392  
(if applicable)

Name RICHARD TURNER

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title GEN COUNSEL : V.P. GOVERNMENTAL RELATIONS

Address 230 S. ADAMS ST  
Street

Phone 850.224.2250

TALLAHASSEE FL 32301  
City State Zip

E-mail rturner@fla.org

Speaking:  For  Against  Information

Representing FLORIDA RESTAURANT & LODGING ASSOC

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.**



**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.)

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

BILL: SB 1122

INTRODUCER: Senator Hays

SUBJECT: Homeowners' Associations

DATE: February 2, 2016      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Caldwell	RI	<b>Unfavorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	AP	_____

**I. Summary:**

SB 1122 revises the rights and obligations of homeowners, homeowners' associations, developers of homeowners' associations, prospective purchasers in homeowners' associations, and community association managers. The bill also increases the jurisdiction of the Department of Business and Professional Regulation (department) over homeowners' associations. The bill:

- Increases the amount of the fine that an association must pay for failure to comply with a records request from "\$50 per calendar day up to 10 days" to \$500 per calendar day up to 30 days;"
- Makes the community association manager (CAM) responsible for paying the fine if failure to comply with a records request is attributable to the CAM, and provides that the CAM cannot be indemnified by the association;
- Extends the date for expiration of the reporting requirement for homeowners' association reporting from July 1, 2016, to July 1, 2026;
- Requires that the report submitted annually instead only once as required by current law;
- Repeals right of associations to foreclose on liens based on fines.
- Provides addition circumstances that would entitle the non-developer members of the association to elect the majority of the board;
- Requires the department to provide mandatory binding arbitration at the request of the homeowner in disputes involving covenants, restrictions, rule enforcement, and duties to maintain and make safe;
- Requires the department to provide training and educational programs for homeowners' association members, directors, and officers;
- Authorizes the department to enforce and ensure compliance with the provisions of ch. 720, F.S., and department rules relating to records access, financial management, and elections and to investigate any complaint made to the department against an association;
- Requires each homeowners' association to pay a \$2 fee per lot to the department to fund the regulatory program;

- Permits the department to suspend the fee if it has sufficient funding to administer the program;
- Requires the seller of a parcel to supply a prospective buyer with the association governing documents at least 7 days before closing;
- Provides that a prospective buyer may terminate the contract for purchase within three days after the receipt of the documents.
- Provides additional causes of action by non-developer association members against a developer for damages resulting from the developer's abandonment or failure to maintain and complete disclosed amenities or infrastructure and for failure to perform or comply with any duty or obligation required under the governing documents, written contract, or written agreement for purchase of the parcel; and
- Prohibits developers from using association funds for any purpose not specifically authorized in a homeowners' association budget

The bill provides an effective date of July 1, 2016.

## II. Present Situation:

### Homeowners' Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.<sup>1</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, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.<sup>2</sup>

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>3</sup>

Section 720.301(4), F.S., defines the terms "declaration of covenants," or "declaration," to mean:

a recorded written instrument in the nature of covenants running with the land which subjects the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members.

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

<sup>2</sup> Section 720.301(9), F.S.

<sup>3</sup> Section 720.302(5), F.S.

Section 720.301(8), F.S., defines the term “member” to mean “a member of an association, and may include, but is not limited to, a parcel owner or an association representing parcel owners or a combination thereof.”

Section 720.301(10), F.S., defines the term “parcel owner” to mean the record owner of legal title to a parcel.

Section 720.301(11), F.S., defines the term “voting interest” to mean “the voting rights distributed to the members of the homeowners’ association, pursuant to the governing documents.”

Homeowners’ associations are administered by a board of directors whose members are elected.<sup>4</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>5</sup> The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.<sup>6</sup>

### **State Regulation of Homeowners’ Associations**

Unlike condominium and cooperative associations,<sup>7</sup> which are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department), 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.

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<sup>4</sup> See ss. 720.303 and 720.307, F.S.

<sup>5</sup> See ss. 720.301 and 720.303, F.S.

<sup>6</sup> Section 720.303(1), F.S.

<sup>7</sup> See chs. 718 and 719, F.S., respectively.



The number of homeowners' associations or persons living in homeowners' associations in Florida is unknown. Although homeowners' associations are required to file articles of incorporation with the Division of Corporations in the Department of State, the division cannot identify corporations that are homeowners' associations under ch. 720, F.S.<sup>8</sup>

### **Division of Florida Condominiums, Timeshares, and Mobile Homes**

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to condominium and cooperative associations that are still under developer control.<sup>9</sup> The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium 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 pursuant to s. 718.111(12), F.S.<sup>10</sup>

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., for condominium and s. 719.501(1)(c), F.S., for cooperatives, authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

In regards to homeowners' associations, the division's authority is limited to arbitration of recall election disputes.<sup>11</sup>

### **Inspection and Copying of Homeowners' Association Records**

Homeowners' associations are required to maintain the official records of the association.<sup>12</sup> Section 720.303(5), F.S., requires that a homeowners' association permit members to inspect and copy its official records within 10 days after a written request for access. The official records must be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access. The records may be made available electronically via the Internet.

If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. The association may impose fees to cover the cost of providing copies of the official records, including, without limitation, the cost of copying. The association may also charge any reasonable costs involving personnel fees and charges at an hourly rate to cover the association's or vendors administrative costs. A member may use his or her portable device, such as a smartphone or scanner, to make a recording of a record at no cost to the member.

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<sup>8</sup> Homeowners' Association Task Force, *Final Report of the Homeowners' Association Task Force*, February 2004, page 5. A copy of the report is available on the internet at <http://www.ccfj.net/DBPRTFfinalreport.pdf> (last visited March 28, 2013).

<sup>9</sup> Section 718.501(1), F.S., and s. 719.501(1), F.S., respectively.

<sup>10</sup> Section 718.501(1), F.S. See Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

<sup>11</sup> See s. 720.303(10)(d), F.S.

<sup>12</sup> Section 720.303(4), F.S.

Any failure by the association to comply with a request in a timely fashion creates a rebuttable presumption that the association willfully failed to do so, and entitles the requesting party to actual damages, or a minimum fine of \$50 per calendar day, for up to 10 calendar days, commencing on the eleventh business day.

### **Reporting Requirement**

Section 720.303(13), F.S., requires community association managers, or the association if there is no manager, to report the following information to the division:

- The legal name of the association.
- The Federal Employee Identification Number of the association.
- The mailing and physical addresses of the association.
- The number of parcels.
- The total amount of revenues and expenses from the annual budget of the association.

For associations in which the developer retains control, the following additional information is required:

- The legal name of the developer.
- The mailing address of the developer.
- The number of parcels the developer owns as of the date of reporting.

The reporting requirement is a continuing obligation on each association to report until the required information is submitted. An association is required to submit the required information only once.

The department is required to establish and implement an Internet-based registration system by December 1, 2013 for associations to use for reporting the required information.<sup>13</sup>

On or before December 1 of each year, the department is required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives providing the homeowner association data reported.

As of January 23, 2016, the department has registered 2,691,986 homeowners' associations which meet the definition in s. 720.301(9), F.S.<sup>14</sup>

The reporting requirement in s. 720.303(13), F.S., expires on July 1, 2016, unless reenacted by the Legislature.

### **Levy of Fines**

Section 720.305(2), F.S., authorizes the association to levy reasonable fines. The association may not impose a fine that exceeds \$100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to

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<sup>13</sup> The department's Internet portal for registration of homeowners' association is available at: <http://www.myfloridalicense.com/dbpr/hoa.html> (last visited January 23, 2016).

<sup>14</sup> See [http://www.myfloridalicense.com/dbpr/sto/file\\_download/public-records-CTMH.html](http://www.myfloridalicense.com/dbpr/sto/file_download/public-records-CTMH.html) (last visited January 23, 2016).

comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing. However, the fine may not exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel.

### **Training and Education Programs**

Section 720.3033(1), F.S., requires the post-election certification of homeowners' association directors. These provisions are similar to the post-election certification requirement for members of a condominium association board in s. 718.112(2)(d)4.b., F.S.

Newly elected directors must certify in writing, within 90 days, that they have read the association's governing documents and policies, that they will work to uphold the documents and policies, and that they will faithfully discharge their fiduciary responsibility to the associations' members. A director who fails to comply with the certification requirement is suspended from the board until he or she complies. The association must maintain a copy of the certification for 5 years after the director's election.

The department does not provide training or educational programs for certification of homeowners' association board members. Instead, the department offers a listing on its Internet site of providers. Most of the listed providers offer the training or education at no cost.<sup>15</sup> For condominium and cooperative association, the department offers a similar listing of providers for the comparable certification requirement for board members of those associations. However, the department also offers several educational publications for condominiums and cooperative associations.<sup>16</sup>

### **Transition of Association Control**

Section 720.307, F.S., provides the situations in which the parcel owners other than the developer are entitled to elect at least a majority of the members of the board of directors:

- Three months after 90 percent of the parcels that will be operated ultimately by the association have been conveyed to purchasers; or
- When such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of parcels.
- When the developer has abandoned or deserted his or her responsibility to maintain and complete the amenities or infrastructure disclosed in the governing documents. There is a rebuttable presumption that the developer has abandoned and deserted the property if the developer has unpaid assessments or guaranteed amounts under s. 720.308, F.S., for a period of more than two years;

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<sup>15</sup> See <http://www.myfloridalicense.com/dbpr/lsc/documents/HOAListofApprovedProviders2015.pdf> (last visited January 23, 2016).

<sup>16</sup> See <http://www.myfloridalicense.com/dbpr/lsc/condominiums/CondoEducation.html> (last visited January 23, 2016).

- When the developer files a petition seeking protection in bankruptcy under chapter 7 of the federal Bankruptcy Code;
- When the developer loses title to the property either through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment; and
- When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members.

Section 720.307(2), F.S., provides that non-developer parcel owners are entitled to elect at least one member of the board of directors once 50 percent of the parcels in all phases of the community have been conveyed to members.

Builders, contractors, or others who purchase a parcel for the purpose of constructing improvements on the parcel for resale are not considered members other than the developer.<sup>17</sup>

### **Dispute Resolution**

Section 720.311, F.S., provides a process to resolve disputes between associations and members.

The critical difference between mediation and arbitration is that in the mediation process the parties to the dispute make all the decisions and resolve the disputes. The mediator only facilitates this resolution. Under arbitration, the neutral third-party arbitrator resolves the dispute.

The department must conduct mandatory binding arbitration of recall election and election disputes between a member and an association using the procedures for resolving condominium disputes in ss. 718.112(2)(j) and 718.1255 and rules adopted by the division. Election disputes and recall disputes are not eligible for presuit mediation. At the conclusion of the proceeding, the department must charge the parties a fee that adequately covers all costs and expenses incurred by the department in conducting the proceeding. The petitioner's is also required to remit an initial filing fee of at least \$200 to the department. These fees are a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding must recover its reasonable costs and attorney fees in an amount found reasonable by the arbitrator.

Section 720.311, F.S., also provides a detailed process for presuit mediation of certain disputes. The following types of disputes between an association and a parcel owner subject to presuit mediation, i.e., the parties must attempt to resolve the dispute by mediation before filing a law suit in court:

- Disputes regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes;
- Disputes regarding amendments to the association documents;
- Disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings; and
- Disputes regarding access to the official records of the association.

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<sup>17</sup> Section 720.307(1), F.S.

The following types of disputes are not subject the presuit mediation requirement:

- The collection of any assessments, fines, or other financial obligations, including attorney fees and costs, or any action to enforce a prior mediation settlement; and
- Any dispute where emergency relief is required.

Persons who fail or refuse to participate in the entire presuit mediation process may not recover attorney fees and costs in subsequent litigation relating to the dispute. The prevailing party is also entitled to seek recovery of all costs and attorney fees incurred in the presuit mediation process in any subsequent arbitration or litigation proceeding for any issue or dispute that is not resolved at presuit mediation.

Mediators and arbitrators of homeowners' association disputes must be certified as a circuit court civil mediator or arbitrator.

### **Publication of False and Misleading Information**

Section 720.402, F.S., creates a cause of action against the developer for persons who reasonably rely on false or misleading statements in advertising and promotional materials, including, but not limited to, a contract of purchase, the declaration of covenants, exhibits to a declaration of covenants, brochures, and newspaper advertising. After the closing of the transaction, the purchaser has a cause of action against the developer for damages under this section from the time of closing until one year after the later date of the events specified in s. 720.402(1)(a)-(d), F.S., which includes the closing of the transaction and the completion by the developer of the common areas and recreational facilities. In any action for relief under this section, the prevailing party may recover reasonable attorney fees. Developers are prohibited from spending association funds in the defense of any suit under this section.

### **Community Association Management**

Community association managers are regulated and licensed pursuant to part VIII of ch. 468, F.S. To be licensed, a community association manager must satisfactorily complete an examination for licensure.

Section 468.431(2), F.S., defines "community association management" to mean:

any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, determining the number of days required for statutory notices, determining amounts due to the association, collecting amounts due to the association before the filing of a civil action, calculating the votes required for a quorum or to approve a proposition or amendment, completing forms related to the management of a community association that have been created by statute or

by a state agency, drafting meeting notices and agendas, calculating and preparing certificates of assessment and estoppel certificates, responding to requests for certificates of assessment and estoppel certificates, negotiating monetary or performance terms of a contract subject to approval by an association, drafting prearbitration demands, coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a community association, and complying with the association's governing documents and the requirements of law as necessary to perform such practices.

A license is not required for persons who perform clerical or ministerial functions under the direct supervision and control of a licensed manager or who only perform the maintenance of a community association and do not assist in any of the management services.<sup>18</sup>

### **III. Effect of Proposed Changes:**

#### **Inspection and Copying of Homeowners' Association Records**

The bill amends s. 720.303(5), F.S., to increase the amount of the fine for failure to comply with a records request from "\$50 per calendar day up to 10 days" to "\$500 per calendar day up to 30 days." The bill also provides that the community association manager (manager) is responsible for paying the fine if failure to comply with a records request is attributable to the manager. The bill also prohibits the association from reimbursing or indemnifying the manager.

#### **Reporting Requirement**

The bill amends the homeowners' association reporting requirement in s. 720.303(13), F.S., to extend the expiration of the requirement from July 1, 2016 to July 1, 2026. The bill increases the frequency of the report by requiring that the report must be submitted annually by the manager, or the association if there is not manager. It requires that the report must be resubmitted when there is a material change from last report.

#### **Levy of Fines**

The bill amends s. 720.305(2), F.S., to repeal the right of an association to impose a lien on a parcel for an unpaid fine.

#### **Transition of Association Control**

The bill amends s. 720.307(1), F.S., to provide the following additional events which would entitle the non-developer parcel owners to elect the majority of the members of the board:

- For homeowners' associations with fewer than 100 lots, members who are not the developer may elect at least a majority of the board of director members three months after 75 percent of the parcels in all phases in the community have been conveyed to members;
- For homeowners' associations with fewer than 200 lots, 10 years after the governing documents are filed with the local government; or

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<sup>18</sup> Section 468.431(2), F.S.

- For homeowners' associations with more than 200 lots, the earlier of 20 years after the governing documents have been filed with the local government or three months after 90 percent of the parcels have been conveyed to the members or three months after 90 percent of the parcels in all phases of the community are conveyed to the members.

### **Dispute Resolution**

The bill amends s. 720.311(1), F.S., to require the department to provide binding arbitration at the request of the homeowner for disputes involving covenants, restrictions, rule enforcement, and duties to maintain and make safe, and disputes involving the official records.

The bill also amends s. 720.311(2)(d), F.S., to permit county court certified mediators and arbitrators to conduct homeowners' association disputes.

### **Training and Education Programs**

The bill creates s. 720.318, F.S., to require the department to provide training and educational programs for homeowners' association members, directors, and officers. The training and educational programs may include web-based electronic media, live training, and seminars in various locations throughout the state.

The bill requires the department to review and approve training and educational programs that are offered by providers. It requires the department to maintain a current list of approved programs and providers and make the list available to homeowners' associations in a reasonable and cost-effective manner.

### **Authority of the Department**

The bill creates s. 720.319, F.S., to authorize the department to enforce and ensure compliance with the provisions of ch. 720, F.S., and to adopt department rules relating to records access, financial management, and elections. It also authorizes the department to investigate any complaint made to the department against a homeowners' association.

The bill requires each homeowners' association to pay a \$2 fee per lot to the department to fund the regulatory program. The fee must be submitted with the annual report. The department may suspend the fee if it has sufficient funding to administer the program. The term "lot" is not defined in ch. 720, F.S.<sup>19</sup>

### **Prospective Purchasers**

The bill amends s. 720.401, F.S., to require that the seller of a parcel must supply a prospective buyer with the association governing documents at least seven days before closing. The following documents must be provided to the prospective purchaser:

- The declaration of covenants;
- Articles and bylaws;

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<sup>19</sup> See s. 720.301(11), F.S., which defines the term "parcel" to include an unplatted lot.

- Rules and regulations;
- The current year operating budget; and
- Any amendment to these documents.

The bill provides that a prospective buyer may terminate the contract for purchase within 3 days after the receipt of the documents.

### **Developer Prohibitions**

The bill amends s. 720.402, F.S., to provide additional causes of action by nondeveloper association members against a developer. It provides that a nondeveloper parcel owner has the following causes of action against the developer:

- For damages resulting from the developer's abandonment or failure to maintain and complete amenities or infrastructure disclosed in the governing documents, written contract, or written agreement for purchase of the parcel; and
- For the developer's failure to perform or comply with any duty or obligation required under the governing documents, written contract, or written agreement for purchase of the parcel.

The bill also prohibits developers from using association funds for any purpose not specifically authorized in a homeowners' association budget adopted in accordance with the governing documents and s. 720.303, F.S., which provides the powers and duties of a homeowners' association. It also gives homeowners and the association a cause of action for use of association funds by a developer. Current law in s. 720.402(2), F.S., prohibits a developer from spending association funds in defense of a suit under s. 720.402, F.S.

The bill provides that this provision is intended to clarify existing law and applies to all homeowners' associations existing on July 1, 2016 and created thereafter.

### **Effective Date**

The bill provides and effective date of July 1, 2016.

## **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:

The bill would impose several requirements on the governance and administration of homeowners' associations. The bill may affect existing homeowners' associations governing documents. The governing documents of homeowners' associations are generally considered to be contracts.<sup>20</sup> To the extent that the provisions of this bill may be applied retroactively, provisions of the bill may prompt concerns regarding the unconstitutional impairment of contract.

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community.<sup>21</sup> The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.<sup>22</sup> In *Exxon Corp. v Eageron*, 462 U.S. 176 (1983), the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

Article I, section 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers.<sup>23</sup> This exception extends to laws that are reasonable and necessary to serve and important public purpose,<sup>24</sup> to include protecting the public's health, safety or welfare.<sup>25</sup> For a statute to offend the constitutional prohibition against impairment of contract, the statute must have the effect of changing substantive rights of the parties to an existing contract. Any retroactive application of a statute affecting substantive contractual rights would be constitutionally suspect.<sup>26</sup>

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts.<sup>27</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

<sup>20</sup> See *Venetian Isles Homeowners' Assoc., Inc., v. Albrecht*, 823 So.2d 813 (Fla. 2<sup>nd</sup> D.C.A. 2002) and *Cudjoe Gardens Property Owners Assoc., Inc. v. Patne*, 779 So.2d 598 (Fla. 3<sup>rd</sup> D.C.A. 2001).

<sup>21</sup> *Stone v. Mississippi*, 101 U.S. 814 (1880).

<sup>22</sup> *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

<sup>23</sup> *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So.2d 681 (Fla. 1980).

<sup>24</sup> *Yellow Cab Co. v. Dade County*, 412 So.2d 395 (Fla. 3<sup>rd</sup> DCA 1982), petition den. 424 So.2d 764 (Fla. 1982).

<sup>25</sup> *Khoury v Carvel Homes South, Inc.*, 403 So.2d 1043 (Fla. 1<sup>st</sup> DCA 1981), petition den. 412 So.2d 467 (Fla. 1981).

<sup>26</sup> *Tri-Properties, Inc. v. Moonspinner Condominium Association, Inc.*, 447 So.2d 965 (Fla. 1<sup>st</sup> DCA 1984).

<sup>27</sup> *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1979).

**B. Private Sector Impact:**

The bill requires each homeowners' association to pay a \$2 fee per parcel to the department to fund the regulatory program. Associations may also incur an expense for the requirement to submit the annual report required by s. 720.303(13), F.S.

**C. Government Sector Impact:**

The bill requires each homeowners' association to pay a \$2 fee per parcel to the department to fund the regulatory program. The department may incur indeterminate costs related to the development of the education and training program, the dispute resolution program, the investigation of complaints, and the enforcement of ch. 720, F.S., as provided by the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 718.509, 720.303, 720.305, 720.307, 720.311, 720.401, and 720.402.

This bill creates sections 720.318 and 720.319 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

By Senator Hays

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1                   A bill to be entitled  
2           An act relating to homeowners' associations; amending  
3           s. 718.509, F.S.; revising the uses of the Florida  
4           Condominiums, Timeshares, and Mobile Homes Trust Fund  
5           to include reimbursement of costs to the Division of  
6           Florida Condominiums, Timeshares, and Mobile Homes for  
7           the administration and operation of the Homeowners'  
8           Association Act; amending s. 720.303, F.S.; increasing  
9           certain fines; providing a cause of action for a  
10          member against a community association manager or  
11          management firm under certain circumstances;  
12          authorizing related fines; prohibiting reimbursement  
13          to a community association manager or management firm  
14          for certain fines; requiring the community association  
15          manager, the management firm, or the association to  
16          annually provide a specified report beginning on a  
17          specified date, and to resubmit the report under  
18          certain circumstances to the Division of Florida  
19          Condominiums, Timeshares, and Mobile Homes; revising  
20          the dates by which the Department of Business and  
21          Professional Regulation must meet certain reporting  
22          requirements; extending the scheduled expiration of  
23          specified statutory text; amending s. 720.305, F.S.;  
24          providing that a fine may not become a lien against a  
25          parcel; amending s. 720.307, F.S.; revising the  
26          circumstances under which members other than the  
27          developer are entitled to elect at least a majority of  
28          the board of directors of the association; amending s.  
29          720.311, F.S.; providing presuit mediation for  
30          election and recall disputes; providing for binding  
31          arbitration by the department for certain disputes  
32          between a parcel owner and a homeowners' association;

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33 authorizing mediation or arbitration by a mediator or  
34 arbitrator, respectively, who has been certified by a  
35 county court; creating s. 720.318, F.S.; requiring the  
36 department to provide training and educational  
37 programs for homeowners' association members,  
38 directors, and officers; providing that the training  
39 may include certain methods; authorizing the  
40 department to review and approve training and  
41 educational programs for members, directors, and  
42 officers; requiring the department to maintain a  
43 current list of approved programs and providers and to  
44 make the list available to homeowners' associations in  
45 a reasonable and cost-effective manner; creating s.  
46 720.319, F.S.; authorizing the department to enforce  
47 and ensure compliance with the Homeowners' Association  
48 Act and specified rules; providing the department  
49 jurisdiction to investigate complaints relating to  
50 homeowners' associations; requiring homeowners'  
51 associations to pay a specified fee to cover the  
52 administrative and operational costs of the  
53 department; prohibiting the department from imposing  
54 the fee under certain circumstances; amending s.  
55 720.401, F.S.; requiring a seller of a parcel to  
56 provide a prospective buyer with specified association  
57 documents under certain circumstances; authorizing a  
58 prospective buyer to terminate a contract for purchase  
59 within a specified timeframe under certain  
60 circumstances; amending s. 720.402, F.S.; providing a  
61 cause of action against developers by nondeveloper

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62 members of a homeowners' association or the  
63 homeowners' association; providing an effective date.

64

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

66

67 Section 1. Subsection (1) of section 718.509, Florida  
68 Statutes, is amended to read:

69 718.509 Division of Florida Condominiums, Timeshares, and  
70 Mobile Homes Trust Fund.—

71 (1) There is created within the State Treasury the Division  
72 of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund  
73 to be used for the administration and operation of this chapter  
74 and chapters 718, 719, 720, 721, and 723 by the division.

75 Section 2. Paragraph (b) of subsection (5) and subsection  
76 (13) of section 720.303, Florida Statutes, are amended to read:

77 720.303 Association powers and duties; meetings of board;  
78 official records; budgets; financial reporting; association  
79 funds; recalls.—

80 (5) INSPECTION AND COPYING OF RECORDS.—The official records  
81 shall be maintained within the state for at least 7 years and  
82 shall be made available to a parcel owner for inspection or  
83 photocopying within 45 miles of the community or within the  
84 county in which the association is located within 10 business  
85 days after receipt by the board or its designee of a written  
86 request. This subsection may be complied with by having a copy  
87 of the official records available for inspection or copying in  
88 the community or, at the option of the association, by making  
89 the records available to a parcel owner electronically via the  
90 Internet or by allowing the records to be viewed in electronic

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91 format on a computer screen and printed upon request. If the  
92 association has a photocopy machine available where the records  
93 are maintained, it must provide parcel owners with copies on  
94 request during the inspection if the entire request is limited  
95 to no more than 25 pages. An association shall allow a member or  
96 his or her authorized representative to use a portable device,  
97 including a smartphone, tablet, portable scanner, or any other  
98 technology capable of scanning or taking photographs, to make an  
99 electronic copy of the official records in lieu of the  
100 association's providing the member or his or her authorized  
101 representative with a copy of such records. The association may  
102 not charge a fee to a member or his or her authorized  
103 representative for the use of a portable device.

104 (b) A member who is denied access to official records is  
105 entitled to the actual damages or minimum damages for the  
106 association's willful failure to comply with this subsection.  
107 The minimum damages are \$500 ~~to be \$50~~ per calendar day up to 30  
108 ~~10~~ days, the calculation to begin on the 11th business day after  
109 receipt of the written request. If the association delegates to  
110 a community association manager or management firm the  
111 responsibility to provide members with access to official  
112 records, as provided in this section, a member who is denied  
113 access to official records by the community association manager  
114 or management firm has a cause of action against the community  
115 association manager or management firm for the actual or minimum  
116 damages provided in this paragraph. A community association  
117 manager or management firm may not be reimbursed or otherwise  
118 indemnified by the association for payment of any actual or  
119 minimum damages provided in this paragraph.

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120 (13) REPORTING REQUIREMENT.—The community association  
121 manager or management firm, or the association when there is no  
122 community association manager or management firm, must submit a  
123 ~~shall~~ report to the division by November 22, 2016 ~~2013~~, and each  
124 year thereafter, in a manner and form prescribed by the  
125 division.

126 (a) The report must ~~shall~~ include the association's:

- 127 1. Legal name.
- 128 2. Federal employer identification number.
- 129 3. Mailing and physical addresses.
- 130 4. Total number of parcels.
- 131 5. Total amount of revenues and expenses from the  
132 association's annual budget.

133 (b) For associations in which control of the association  
134 has not been transitioned to nondeveloper members, as set forth  
135 in s. 720.307, the report shall also include the developer's:

- 136 1. Legal name.
- 137 2. Mailing address.
- 138 3. Total number of parcels owned on the date of reporting.

139 (c) The reporting requirement provided in this subsection  
140 shall be a continuing obligation on each association until the  
141 required information is reported to the division. The community  
142 association manager or management firm, or the association if  
143 there is no community association manager or management firm,  
144 must resubmit the report required under this subsection upon the  
145 occurrence of a material change in the information required to  
146 be reported pursuant to paragraphs (a) and (b).

147 (d) By October 1, 2016 ~~2013~~, the department shall establish  
148 and implement a registration system through an Internet website

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149 that provides for the reporting requirements of paragraphs (a)  
150 and (b).

151 (e) The department shall prepare an annual report of the  
152 data reported pursuant to this subsection and present it to the  
153 Governor, the President of the Senate, and the Speaker of the  
154 House of Representatives by December 1, 2016 ~~2013~~, and each year  
155 thereafter.

156 (f) The division shall adopt rules pursuant to ss.  
157 120.536(1) and 120.54 to implement the provisions of this  
158 subsection.

159 (g) This subsection shall expire on July 1, 2026 ~~2016~~,  
160 unless reenacted by the Legislature.

161 Section 3. Subsection (2) of section 720.305, Florida  
162 Statutes, is amended to read:

163 720.305 Obligations of members; remedies at law or in  
164 equity; levy of fines and suspension of use rights.—

165 (2) The association may levy reasonable fines. A fine may  
166 not exceed \$100 per violation against any member or any member's  
167 tenant, guest, or invitee for the failure of the owner of the  
168 parcel or its occupant, licensee, or invitee to comply with any  
169 provision of the declaration, the association bylaws, or  
170 reasonable rules of the association unless otherwise provided in  
171 the governing documents. A fine may be levied by the board for  
172 each day of a continuing violation, with a single notice and  
173 opportunity for hearing, except that the fine may not exceed  
174 \$1,000 in the aggregate unless otherwise provided in the  
175 governing documents. A fine ~~of less than \$1,000~~ may not become a  
176 lien against a parcel. In any action to recover a fine, the  
177 prevailing party is entitled to reasonable attorney fees and



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178 costs from the nonprevailing party as determined by the court.

179 (a) An association may suspend, for a reasonable period of  
180 time, the right of a member, or a member's tenant, guest, or  
181 invitee, to use common areas and facilities for the failure of  
182 the owner of the parcel or its occupant, licensee, or invitee to  
183 comply with any provision of the declaration, the association  
184 bylaws, or reasonable rules of the association. This paragraph  
185 does not apply to that portion of common areas used to provide  
186 access or utility services to the parcel. A suspension may not  
187 prohibit an owner or tenant of a parcel from having vehicular  
188 and pedestrian ingress to and egress from the parcel, including,  
189 but not limited to, the right to park.

190 (b) A fine or suspension may not be imposed by the board of  
191 administration without at least 14 days' notice to the person  
192 sought to be fined or suspended and an opportunity for a hearing  
193 before a committee of at least three members appointed by the  
194 board who are not officers, directors, or employees of the  
195 association, or the spouse, parent, child, brother, or sister of  
196 an officer, director, or employee. If the committee, by majority  
197 vote, does not approve a proposed fine or suspension, it may not  
198 be imposed. The role of the committee is limited to determining  
199 whether to confirm or reject the fine or suspension levied by  
200 the board. If the board of administration imposes a fine or  
201 suspension, the association must provide written notice of such  
202 fine or suspension by mail or hand delivery to the parcel owner  
203 and, if applicable, to any tenant, licensee, or invitee of the  
204 parcel owner.

205 Section 4. Subsection (1) of section 720.307, Florida  
206 Statutes, is amended to read:

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207 720.307 Transition of association control in a community.-  
208 With respect to homeowners' associations:

209 (1) Members other than the developer are entitled to elect  
210 at least a majority of the members of the board of directors of  
211 the homeowners' association upon the occurrence of any of the  
212 following ~~when the earlier of the following events occurs:~~

213 (a) For a homeowners' association consisting of fewer than  
214 100 lots, the passage of 3 months after 75 percent of the  
215 parcels in all phases of the community which will ultimately be  
216 operated by the homeowners' association have been conveyed to  
217 members.

218 (b) For a homeowners' association consisting of fewer than  
219 200 lots, the passage of 10 years after the governing documents  
220 of the homeowners' association are filed with the local  
221 government.

222 (c) For a homeowners' association consisting of 200 or more  
223 lots, the earlier of the passage of 20 years after the governing  
224 documents of the homeowners' association are filed with the  
225 local government or 3 months after 90 percent of the parcels in  
226 all phases of the community which will ultimately be operated by  
227 the homeowners' association have been conveyed to members. ~~Three~~  
228 ~~months after 90 percent of the parcels in all phases of the~~  
229 ~~community that will ultimately be operated by the homeowners'~~  
230 ~~association have been conveyed to members;~~

231 (h) ~~(b)~~ Conveyance of another ~~Such other~~ percentage of the  
232 parcels ~~has been conveyed~~ to members, or the occurrence of such  
233 other date or event ~~has occurred~~, as is set forth in the  
234 governing documents in order to comply with the requirements of  
235 any governmentally chartered entity with regard to the mortgage

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236 financing of parcels.†

237 (d)~~(e)~~ Abandonment by the developer, or the developer's  
238 failure of ~~Upon the developer abandoning or deserting its~~  
239 responsibility to maintain and complete the amenities or  
240 infrastructure as disclosed in the governing documents. There is  
241 a rebuttable presumption that the developer has abandoned and  
242 deserted the property if the developer has unpaid assessments or  
243 guaranteed amounts under s. 720.308 for a period of more than 2  
244 years.†

245 (e)~~(d)~~ ~~Upon the developer~~ Filing by the developer of a  
246 petition seeking protection under chapter 7 of the federal  
247 Bankruptcy Code.†

248 (f)~~(e)~~ Loss of ~~Upon the developer losing~~ title to the  
249 property by the developer through a foreclosure action or the  
250 transfer of a deed in lieu of foreclosure, unless the successor  
251 owner has accepted an assignment of developer rights and  
252 responsibilities first arising after the date of such  
253 assignment.† ~~or~~

254 (g)~~(f)~~ Appointment of ~~Upon~~ a receiver for the developer  
255 ~~being appointed~~ by a circuit court, if the receiver is ~~and not~~  
256 ~~being~~ discharged within 30 days after such appointment, unless  
257 the court determines within 30 days after such appointment that  
258 transfer of control would be detrimental to the association or  
259 its members.

260

261 For purposes of this section, the term "members other than the  
262 developer" does ~~shall~~ not include builders, contractors, or  
263 others who purchase a parcel for the purpose of constructing  
264 improvements ~~thereon~~ for resale.

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265 Section 5. Subsection (1) and paragraph (d) of subsection  
266 (2) of section 720.311, Florida Statutes, are amended to read:  
267 720.311 Dispute resolution.—

268 (1) The Legislature finds that alternative dispute  
269 resolution has made progress in reducing court dockets and  
270 trials and in offering a more efficient, cost-effective option  
271 to litigation. The filing of any petition for arbitration or the  
272 serving of a demand for presuit mediation as provided for in  
273 this section shall toll the applicable statute of limitations.  
274 Any recall dispute filed with the department pursuant to s.  
275 720.303(10) shall be conducted by the department in accordance  
276 with the provisions of ss. 718.112(2)(j) and 718.1255 and the  
277 rules adopted by the division. In addition, the department shall  
278 conduct mandatory binding arbitration of election disputes  
279 between a member and an association pursuant to s. 718.1255 and  
280 rules adopted by the division. ~~Neither Election disputes and nor~~  
281 ~~recall disputes are eligible for presuit mediation; these~~  
282 ~~disputes shall be arbitrated by the department. At the request~~  
283 ~~of the parcel owner or homeowners' association, the department~~  
284 shall provide binding arbitration in disputes involving  
285 covenants, restrictions, rule enforcement, and duties to  
286 maintain and make safe pursuant to the declaration of covenants,  
287 rules and regulations, and other governing documents; disputes  
288 involving assessments; and disputes involving the official  
289 records of the homeowners' association. At the conclusion of the  
290 proceeding, the department shall charge the parties a fee in an  
291 amount adequate to cover all costs and expenses incurred by the  
292 department in conducting the proceeding. Initially, the  
293 petitioner shall remit a filing fee of at least \$200 to the

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294 department. The fees paid to the department shall become a  
295 recoverable cost in the arbitration proceeding, and the  
296 prevailing party in an arbitration proceeding shall recover its  
297 reasonable costs and attorney ~~attorney's~~ fees in an amount found  
298 reasonable by the arbitrator. The department shall adopt rules  
299 to effectuate the purposes of this section.

300 (2)

301 (d) A mediator or arbitrator shall be authorized to conduct  
302 mediation or arbitration under this section only if he or she  
303 has been certified as a county court or circuit court civil  
304 mediator or arbitrator, respectively, pursuant to the  
305 requirements established by the Florida Supreme Court.  
306 Settlement agreements resulting from mediation do ~~shall~~ not have  
307 precedential value in proceedings involving parties other than  
308 those participating in the mediation to support either a claim  
309 or defense in other disputes.

310 Section 6. Section 720.318, Florida Statutes, is created to  
311 read:

312 720.318 Training and educational programs.—The department  
313 shall provide training and educational programs for homeowners'  
314 association members, directors, and officers. At the  
315 department's discretion, the training and educational programs  
316 may include web-based electronic media, live training, and  
317 seminars in various locations throughout the state. The  
318 department may review and approve training and educational  
319 programs for members, directors, and officers of homeowners'  
320 associations which are offered by providers. The department  
321 shall maintain a current list of approved programs and providers  
322 and shall make such list available to homeowners' associations

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323 in a reasonable and cost-effective manner.

324 Section 7. Section 720.319, Florida Statutes, is created to  
325 read:

326 720.319 Authority of the department.-

327 (1) The department may enforce and ensure compliance with  
328 this chapter and rules relating to records access, financial  
329 management, and elections of homeowners' associations and may  
330 investigate any complaint made to the department against a  
331 homeowners' association.

332 (2) Homeowners' associations must pay to the department an  
333 annual fee of \$2 per lot to cover the department's  
334 administrative and operational costs in complying with this  
335 chapter. The fee must be submitted to the department with the  
336 annual report required under s. 720.303(13) and deposited into  
337 the Division of Florida Condominiums, Timeshares, and Mobile  
338 Homes Trust Fund. However, the department may not impose this  
339 fee when it has determined, based on the long-range estimates of  
340 such revenue, that the funds collected exceed those required to  
341 cover such costs.

342 Section 8. Present subsection (2) of section 720.401,  
343 Florida Statutes, is redesignated as subsection (3), and a new  
344 subsection (2) is added to that section, to read:

345 720.401 Prospective purchasers subject to association  
346 membership requirement; disclosure required; covenants;  
347 assessments; contract cancellation.-

348 (2) A seller of a parcel for which membership in a  
349 homeowners' association is a condition of ownership must provide  
350 a prospective buyer with the association's governing documents,  
351 including the declaration of covenants, articles and bylaws,

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352 rules and regulations, and operating budget for the current  
353 year, and any amendment to such documents. The seller must  
354 provide the prospective buyer with such documents at least 7  
355 days before closing. The prospective buyer may terminate the  
356 contract for purchase within 3 days after receipt of such  
357 documents.

358 Section 9. Section 720.402, Florida Statutes, is amended to  
359 read:

360 720.402 Publication of false and misleading information;  
361 developer's use of homeowners' association fund prohibited.-

362 (1) Any person who, in reasonable reliance upon any  
363 material statement or information that is false or misleading  
364 and published by or under authority from the developer in  
365 advertising and promotional materials, including, but not  
366 limited to, a contract of purchase, the declaration of  
367 covenants, exhibits to a declaration of covenants, brochures,  
368 and newspaper advertising, pays anything of value toward the  
369 purchase of a parcel in a community located in this state has a  
370 cause of action to rescind the contract or collect damages from  
371 the developer for his or her loss before the closing of the  
372 transaction. After the closing of the transaction, the purchaser  
373 has a cause of action against the developer for damages under  
374 this section from the time of closing until 1 year after the  
375 date upon which the last of the events described in paragraphs  
376 (a) through (d) occurs:

377 (a) The closing of the transaction;

378 (b) The issuance by the applicable governmental authority  
379 of a certificate of occupancy or other evidence of sufficient  
380 completion of construction of the purchaser's residence to allow

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381 lawful occupancy of the residence by the purchaser. In counties  
382 or municipalities in which certificates of occupancy or other  
383 evidences of completion sufficient to allow lawful occupancy are  
384 not customarily issued, for the purpose of this section,  
385 evidence of lawful occupancy shall be deemed to be given or  
386 issued upon the date that such lawful occupancy of the residence  
387 may be allowed under prevailing applicable laws, ordinances, or  
388 statutes;

389 (c) The completion by the developer of the common areas and  
390 such recreational facilities, whether or not the same are common  
391 areas, which the developer is obligated to complete or provide  
392 under the terms of the written contract, governing documents, or  
393 written agreement for purchase or lease of the parcel; or

394 (d) In the event there is not a written contract or  
395 agreement for sale or lease of the parcel, then the completion  
396 by the developer of the common areas and such recreational  
397 facilities, whether or not they are common areas, which the  
398 developer would be obligated to complete under any rule of law  
399 applicable to the developer's obligation.

400 (2) (a) A nondeveloper parcel owner has a cause of action  
401 against the developer for damages resulting from the developer's  
402 abandonment or failure of his or her responsibility to maintain  
403 and complete amenities or infrastructure disclosed in the  
404 governing documents, written contract, or written agreement for  
405 purchase of the parcel.

406 (b) A nondeveloper parcel owner has a cause of action  
407 against the developer for the developer's failure to perform or  
408 comply with any duty or obligation required under the governing  
409 documents, written contract, or written agreement for purchase



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410 of the parcel.

411 (3) A developer may not use association funds for any  
412 purpose not specifically authorized in a homeowners' association  
413 budget adopted in accordance with the governing documents and s.  
414 720.303. Any use of association funds by a developer in  
415 violation of this section is actionable by a nondeveloper parcel  
416 owner or the homeowners' association. This subsection is  
417 intended to clarify existing law and applies to all homeowners'  
418 associations existing on July 1, 2016 and created thereafter.

419 (4) Under no circumstances may a cause of action created or  
420 recognized under this section survive for a period of more than  
421 5 years after the closing of the transaction.

422 (5)~~(2)~~ In any action for relief under this section, the  
423 prevailing party may recover reasonable attorney ~~attorney's~~  
424 fees. A developer may not expend association funds in the  
425 defense of any suit under this section.

426 Section 10. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*  
Governmental Oversight and Accountability, *Vice Chair*  
Appropriations  
Environmental Preservation and Conservation  
Ethics and Elections  
Fiscal Policy

### JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

**SENATOR ALAN HAYS**

11th District

# MEMORANDUM

**To:** Senator Rob Bradley, Chair  
Regulated Industries  
CC: Patrick L. "Booter" Imhof, Staff Director  
Lynn Koon, Committee Administrative Assistant

**From:** Senator D. Alan Hays

**Subject:** Request to agenda SB 1122 Homeowners' Associations

**Date:** January 5, 2016

---

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD  
State Senator, District 11

### REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2-2-16

Meeting Date

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

1122

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Richard Pinsky

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

Address 106 E. College Ave #1200

Phone \_\_\_\_\_

Street

City

Tallahassee, FL

State

32301

Zip

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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-2-16

Meeting Date

1122

Bill Number (if applicable)

Topic Homeowner Associations

Amendment Barcode (if applicable)

Name TRAVIS MOORE

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

Address P.O. Box 2020

Phone 727.421.6902

Street

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 (CAI) AND FirstService Residential

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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

\_\_\_\_\_  
Meeting Date

1122  
Bill Number (if applicable)

Topic \_\_\_\_\_

\_\_\_\_\_  
Amendment Barcode (if applicable)

Name William Sklar

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

Address ~~\_\_\_\_\_~~ 215 S Monroe Street  
Street  
Ste 200, Tallahassee  
City State Zip

Phone 904-654-4953

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

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.**



**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 764

INTRODUCER: Senator Hays

SUBJECT: Public Food Service Establishments

DATE: February 2, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<b>Favorable</b>
2.	<u>Oxamendi</u>	<u>Caldwell</u>	<u>RI</u>	<b>Favorable</b>
3.	_____	_____	<u>FP</u>	_____

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**I. Summary:**

SB 764 amends s. 509.013, F.S., to exclude from the definition of “public food service establishment”:

- Any temporary eating place used for food contests or cook offs and maintained by a school, college, university, church, religious organization, nonprofit fraternal organization, or nonprofit civic organization; and
- Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or temporary event lasting up to three days hosted by a church, religious organization, nonprofit fraternal organization, or nonprofit civic organization.

The bill requires that, upon request by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation (division), the organization claiming the exclusion must provide proof of its status as a church, religious organization, nonprofit fraternal organization, or nonprofit civic organization.

**II. Present Situation:**

**Public Food Service Establishments**

Section 509.013(5)(a), F.S., defines the term “public food service establishment” to mean:

any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

At the end of the 2013-2014 fiscal year, there were 87,083 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.<sup>1</sup>

The Division of Hotels and Restaurants within the Department of Business and Professional Regulation (department) is the state agency charged with enforcing the provisions of part I of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.

### **Exclusions from the Definition of Public Food Service Establishments**

There are several exclusions from the definition of public food service establishment, including:<sup>2</sup>

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty or temporarily to serve events such as fairs, carnivals, and athletic contests.
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests.
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families.<sup>3</sup>
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services (DACs) under s. 500.12, F.S.
- Any place of business serving only ice, beverages, popcorn, and prepackaged items.
- Any vending machine that dispenses any food or beverage other than potentially hazardous foods.<sup>4</sup>
- Any research and development test kitchen limited to the use of employees and not open to the general public.

### **Temporary Food Service Events**

A “temporary food service event” is any event of 30 days or less where food is prepared, served, or sold to the general public.<sup>5</sup> During Fiscal Year 2014-2015, the division issued 7,849 temporary food service event licenses.<sup>6</sup> The division issues licenses for 1 - 3-day events, 4 - 30-day events, and an annual licenses. The division does not license temporary food service events located on the premises of a church, school, or nonprofit fraternal or civic organization or events

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<sup>1</sup> Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Reports*, Fiscal Year 2013-2014, available at: [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014\\_15.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014_15.pdf) (last visited January 27, 2016).

<sup>2</sup> Section 509.013(5)(b), F.S.

<sup>3</sup> Including other similar food service establishments that are regulated under s. 381.0072, F.S.

<sup>4</sup> Vending machines located in a facility regulated under s. 381.0072, F.S., that dispense potentially hazardous foods are also excluded from the definition.

<sup>5</sup> Section 509.13(8), F.S.

<sup>6</sup> *Supra* note 2.



located elsewhere and operated by such organizations because these types of organizations are excluded from the division's regulation.<sup>7</sup>

Current license fees are \$91 for a 1 - 3-day license, \$105 for a 4 - 30-day license, and \$456 for an annual license.<sup>8</sup> The division collected an estimated \$199,654 from 1 - 3-day license fees in Fiscal Year 2014-2015.<sup>9</sup>

### III. Effect of Proposed Changes:

SB 764 amends s. 509.013, F.S., to exclude from the definition of "public food service establishment":

- Any temporary eating place used for food contests or cook offs and maintained by a school, college, university, church, religious organization, nonprofit fraternal organization, or nonprofit civic organization; and
- Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or temporary event lasting up to three days hosted by a church, religious organization, nonprofit fraternal organization, or nonprofit civic organization.

The bill requires that, upon request by the division, the organization claiming the exclusion must provide documentation of its status as a church, religious organization, nonprofit fraternal organization, or nonprofit civic organization.

The bill also makes technical and conforming changes.

The bill establishes an effective date of July 1, 2016.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>7</sup> Florida Dep't of Business and Professional Regulation, *Do churches, schools, or nonprofit organizations need a temporary food service event license?* (updated 06/01/2012) available at [http://myfloridalicense.custhelp.com/app/answers/detail/a\\_id/104](http://myfloridalicense.custhelp.com/app/answers/detail/a_id/104) (last visited Jan. 27, 2016).

<sup>8</sup> Rule 61C-1.008, F.A.C.

<sup>9</sup> Florida Dep't of Business and Professional Regulation, *Senate Bill 764 Analysis* (Nov. 23, 2016) (on file with the Senate Committee on Regulated Industries and Committee on Health Policy).

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

None.

**B. Private Sector Impact:**

SB 764 may have a positive fiscal impact on any person or entity that would have been required to obtain a license for a temporary food service event, is no longer required to obtain such license.

**C. Government Sector Impact:**

The department estimates that SB 764 will likely have a negative fiscal impact on the department of up to \$199,654 annually due to the reduction in license fees being generated. Additionally, the revenue reduction will also cause a \$15,972 annual reduction in the 8 percent service charge transferred to general revenue.<sup>10</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 509.013 and 509.032 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

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

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<sup>10</sup> Supra note 10

By Senator Hays

11-00079-16

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1                   A bill to be entitled  
2           An act relating to public food service establishments;  
3           amending s. 509.013, F.S.; revising the definition of  
4           the term "public food service establishment" to  
5           exclude certain events; amending s. 509.032, F.S.;  
6           clarifying that a food service license is not required  
7           to be obtained if an event is excluded under the  
8           definition of the term "public food service  
9           establishment"; providing an effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13           Section 1. Subsection (5) of section 509.013, Florida  
14 Statutes, is amended to read:

15           509.013 Definitions.—As used in this chapter, the term:

16           (5) (a) "Public food service establishment" means any  
17 building, vehicle, place, or structure, or any room or division  
18 in a building, vehicle, place, or structure where food is  
19 prepared, served, or sold for immediate consumption on or in the  
20 vicinity of the premises; called for or taken out by customers;  
21 or prepared prior to being delivered to another location for  
22 consumption.

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

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

27           a. For the use of students and faculty; or

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

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

33           a. For the use of members and associates; or

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

36  
37 Upon request by the division, a church or a religious, nonprofit  
38 fraternal, or nonprofit civic organization claiming an exclusion  
39 under this subparagraph must provide the division documentation  
40 of its status as a church or a religious, nonprofit fraternal,  
41 or nonprofit civic organization.

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

49           ~~4.3.~~ Any eating place located on an airplane, train, bus,  
50 or watercraft which is a common carrier.

51           ~~5.4.~~ Any eating place maintained by a facility certified or  
52 licensed and regulated by the Agency for Health Care  
53 Administration or the Department of Children and Families or  
54 other similar place that is regulated under s. 381.0072.

55           ~~6.5.~~ Any place of business issued a permit or inspected by  
56 the Department of Agriculture and Consumer Services under s.  
57 500.12.

58           ~~7.6.~~ Any place of business where the food available for

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59 consumption is limited to ice, beverages with or without  
60 garnishment, popcorn, or prepackaged items sold without  
61 additions or preparation.

62 ~~8.7.~~ Any theater, if the primary use is as a theater and if  
63 patron service is limited to food items customarily served to  
64 the admittees of theaters.

65 ~~9.8.~~ Any vending machine that dispenses any food or  
66 beverages other than potentially hazardous foods, as defined by  
67 division rule.

68 ~~10.9.~~ Any vending machine that dispenses potentially  
69 hazardous food and which is located in a facility regulated  
70 under s. 381.0072.

71 ~~11.10.~~ Any research and development test kitchen limited to  
72 the use of employees and which is not open to the general  
73 public.

74 Section 2. Paragraph (c) of subsection (3) of section  
75 509.032, Florida Statutes, is amended to read:

76 509.032 Duties.—

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

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

82 1. Sponsors of temporary food service events shall notify  
83 the division not less than 3 days before the scheduled event of  
84 the type of food service proposed, the time and location of the  
85 event, a complete list of food service vendors participating in  
86 the event, the number of individual food service facilities each  
87 vendor will operate at the event, and the identification number

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88 of each food service vendor's current license as a public food  
89 service establishment or temporary food service event licensee.  
90 Notification may be completed orally, by telephone, in person,  
91 or in writing. A public food service establishment or food  
92 service vendor may not use this notification process to  
93 circumvent the license requirements of this chapter.

94 2. The division shall keep a record of all notifications  
95 received for proposed temporary food service events and shall  
96 provide appropriate educational materials to the event sponsors  
97 and notify the event sponsors of the availability of the food-  
98 recovery brochure developed under s. 595.420.

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

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

113 Section 3. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*  
Governmental Oversight and Accountability, *Vice Chair*  
Appropriations  
Environmental Preservation and Conservation  
Ethics and Elections  
Fiscal Policy

### JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

**SENATOR ALAN HAYS**

11th District

# MEMORANDUM

**To:** Senator Rob Bradley, Chair  
Committee on Regulated Industries  
CC: Patrick L. "Booter" Imhof, Staff Director  
Lynn Koon, Committee Administrative Assistant

**From:** Senator D. Alan Hays

**Subject:** Request to agenda SB 764- Public Food Service Establishments

**Date:** January 26, 2016

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The above referenced bill passed through Committee on Health Policy this morning. In the interest of keeping the bill moving forward, I am asking that you please consider adding it to your next agenda "if received." This bill sailed through all of its committees of reference last year with no opposition. It would have made it all the way through the process, but was a victim of the House leaving early. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD  
State Senator, District 11

### REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-2-16

Meeting Date

Topic PUBLIC FOOD SVC ESTABLISHMENTS

Bill Number 764  
*(if applicable)*

Name RICHARD TURNER

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title GEN COUNSEL : V.P. GOVERNMENTAL RELATIONS

Address 230 S. ADAMS ST  
Street

Phone 850. 224. 2250

Tallahassee FL 32301  
City State Zip

E-mail rturner@fla.org

Speaking:  For  Against  Information

Representing FLORIDA RESTAURANTS & LODGING ASSOC

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 (10/20/11)



